UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
6th meeting
held on
Monday, 30 September 1991
at 3 p.m.
New York

SUMMARY RECORD OF THE 6th MEETING

Chairman: Mr. AFONSO (Mozambique)

CONTENTS

AGENDA ITEM 129: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FOURTH SESSION (continued)

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

This record is subject to correction.
Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, Room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

91-56240 3904S (E)

Distr. GENERAL
A/C.6/46/SR.6
14 October 1991
ENGLISH
ORIGINAL: SPANISH

The meeting was called to order at 3.10 p.m.

AGENDA ITEM 129: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FOURTH SESSION (continued)

1. Mr. BERG (Germany) said that Germany would continue to give full support to the work of the United Nations Commission on International Trade Law (UNCITRAL), whose efforts were enabling trade barriers to be dismantled and existing trade relations to be improved.

2. The report of UNCITRAL (A/46/17) demonstrated the fruitfulness of the activities of the Commission, its working groups and the Secretariat. The success of the various conventions, model laws and legal guides elaborated by UNCITRAL could be attributed in large part to the intensification over recent years of the Secretariat's activities in developing countries. Through seminars and symposia, notably the fourth UNCITRAL symposium on international trade law, knowledge of those instruments and understanding of international trade law in general had been widened and deepened.

3. It was regrettable that UNCITRAL had not been able to conclude its work on the draft Model Law on International Credit Transfers, discussion of which had begun in 1986, given its considerable practical and economic significance. In view of the increase in the volume and technical potential of international credit transfers and in the use of modern electronic systems, it was as important as it was difficult to establish clear rules which were acceptable to all, banks as well as their customers, and which were compatible with the general legal principles of the participating States. For the member States of the European Community the provisions of the Model Law would assume additional relevance, since the establishment of a single European market would end the differentiation between domestic and international credit transfers. It was, thus, even more imperative for UNCITRAL to adopt a draft which was acceptable to all States and which would be implemented by them. Accordingly, it was to be hoped that the remainder of the session could be used to resolve controversial issues, and that the legitimate concerns of the economically weak countries would be taken into account, without jeopardizing or abandoning the principle of freedom of contract.

4. Remarkable progress had also been achieved on other subjects dealt with by the Commission's working groups, such as the conclusion, ahead of time, of the draft legal guide on drawing up international countertrade contracts, particularly since there was a great demand for information, especially in the countries of Eastern Europe and the developing countries. With regard to the draft model law on procurement, which was also of immediate interest to all States, his delegation would welcome it if, because of the complexity of the issue, the model law could be accompanied by a commentary whose legal status would, however, need to be defined. The work on a uniform law on guarantees and stand-by letters of credit had also progressed enormously.

(Mr. Berg, Germany)

5. His Government welcomed UNCITRAL's contribution to the world-wide recognition of the concept of international law, of which international trade law had always been an integral part. The Secretariat's idea of combining the twenty-fifth session of the Commission with a major congress on the work of the United Nations and UNCITRAL in the field of international trade law was a very promising way of interesting a wider legal public throughout the world in the work done by UNCITRAL.

6. Mr. NEDELCHEV (Bulgaria) said that Bulgaria was pleased to participate in the work of the Commission, which, since its establishment, had worked efficiently and achieved significant results in the harmonization and unification of international trade law. The radical transformation of the economic system and of the legislative basis of economic activity in Bulgaria had increased his Government's interest in and appreciation for the valuable work of UNCITRAL.

7. Among the major legislative measures adopted in that connection by the Parliament of Bulgaria during the current year, he drew attention to the Statistics Law and the Accountancy Law, which had established a system of accounting for economic results that was compatible with the system in the continental European democracies and that took account of the recommendations of the European Community Commission for standardizing the continental and common law accounting systems; the Law on the Ownership and Use of Agricultural Lands, which established the principles of the return of land to its former owners and the restoration of private ownership; the Law on the Protection of Competition, which marked the beginning of the demonopolization of State enterprises; and the Law on the Bulgarian National Bank and the Law on Banking and Credit, which had set in motion the reform of the banking system. The Law on Commerce, which was based on civil and commercial legislation in Germany, France, Italy, Switzerland and a number of other countries, covered almost all forms of organization of economic activity in Bulgaria, without differentiating between participation by national or foreign enterprises or persons. Further, the Law on Foreign Investment established additional guarantees for foreign investment in economic activity in Bulgaria in any of the legal forms established for its nationals by Bulgarian legislation.

8. His Government was looking forward to the finalization and adoption, at the next session, of the draft Model Law on International Credit Transfers, constituting the major item on UNCITRAL's agenda. Further, his delegation noted with satisfaction that the Working Group on International Payments had recently completed its consideration of the draft legal guide on drawing up international countertrade contracts, and trusted that the entire text would be adopted at the next session. That same Working Group had been assigned the task of identifying the legal issues involved in electronic data interchange and of considering possible statutory provisions, an endeavour of particular importance since it would embrace all legal systems, including those of developing countries, which were already or soon would be confronted with such issues.

(Mr. Nedelchev, Bulgaria)

9. His delegation noted with appreciation the progress made by the other two working groups entrusted with the preparation of a draft model law on procurement and of a draft uniform law on guarantees and stand-by letters of credit, and trusted that they would continue to carry out their tasks expeditiously.

10. Bulgaria, which had recently become party to the United Nations Convention on Contracts for the International Sale of Goods, welcomed the increasing acceptance by the international community of legal texts elaborated by the Commission, a development which evidenced their importance and the quality of their drafting. He shared the opinion that the work of the Commission in strengthening the rule of law in international economic relations would make an important contribution to the United Nations Decade of International Law, and welcomed the decision to hold a Congress on International Trade Law in May 1992, since it would provide an opportunity to study achievements to date and explore the possibility of establishing a unified and harmonized body of trade law.

11. Mr. MIRZAEE-YENGEJEH (Islamic Republic of Iran) said that UNCITRAL, established in 1966 with a view to reducing discrepancies in trade law among different States, had taken positive steps in fulfilling its mandate, and its activities and achievements justified the expectation that it would make a further valuable contribution to the development of international trade law. International trade was an undeniable and integral factor of contemporary international relations. Properly conducted, it would certainly play an important role in helping the developing countries in their struggle for advancement and pave the way for ensuring justice in economic relations, which was essential for the preservation of peace and stability in the world. It was his earnest hope that the Commission would give due consideration to the interests and needs of developing countries.

12. His country attached great importance to the preparation of a draft legal guide on countertrade and appreciated the expeditious work done by the Commission in that respect, part of which had been entrusted to the Working Group on International Payments, which had already accomplished that task. He hoped that the Commission would finalize the draft legal guide on countertrade at its twenty-fifth session, which would be a valuable contribution to the unification of international trade law, the raison d'être of UNCITRAL. The legal guide would be extremely helpful in legal practice, especially in developing countries and their enterprises since it would enable them to remain aware of the difficulties and possibilities that existed in various fields of international trade.

13. He noted with satisfaction that the Working Group on International Payments had prepared a draft text of the Model Law on International Credit Transfers, which certainly constituted an excellent basis for the deliberations of UNCITRAL and he agreed with the Commission's conclusion that the Working Group on the New International Economic Order and the Working

(Mr. Mirzaee-Yengejeh, Islamic Republic of Iran)

Group on International Contract Practices should continue to prepare a model law on procurement and a uniform law on guarantees and stand-by letters of credit, respectively.

14. He was particularly happy to see that the Commission's activities in the field of training and assistance, which were of great importance to developing countries, were progressing and expanding and supported the idea of organizing a symposium at the twenty-sixth session of the Commission, which was to be held in 1993 in Vienna. The Commission should duly contribute to the activities of the United Nations Decade of International Law since international trade law was part of international law. He therefore supported the idea of organizing a Congress on International Trade Law at the twenty-fifth session of UNCITRAL and hoped that experts from all the major legal systems as well as the various geographical regions would be invited to present papers.

15. With regard to the legal problems of electronic data interchange, it must be pointed out that although the Commission had focused its attention since 1984 on the desirability and feasibility of preparing a standard communication agreement, studies carried out by the Secretariat indicated that it was premature to undertake that task, and his delegation agreed with that view.

16. Mr. MOGENSON (Denmark), speaking on behalf of the five Nordic countries, said that as recent developments in the world had demonstrated, international trade in the years to come would have increasing importance and UNCITRAL was a very relevant forum for solving many of the problems which that would entail.

17. The Nordic countries welcomed the adoption at the diplomatic conference in Vienna of the Convention on the Liability of Operators of Transport Terminals in International Trade; it was to be hoped that having studied the text agreed upon, countries would be in a position to accede to the Convention.

18. The Nordic countries were especially interested in the work on a Model Law on International Credit Transfers and the work on guarantees and stand-by letters of credit, the results of which would be of great importance in practical business affairs. Although the Nordic countries were in principle opposed to countertrade because it was not in conformity with the principle of free trade, they recognized that countertrade existed and that it was useful to have a guide for drawing up contracts in that field.

19. Since its establishment in 1966, the Commission had made an impressive contribution to the effort to promote the progressive harmonization and unification of international trade law. The Nordic countries had already welcomed with particular satisfaction the adoption in Vienna in 1980 of the United Nations Convention on Contracts for the International Sale of Goods, which was currently in force in Denmark, Finland, Norway and Sweden, and they hoped that UNCITRAL would continue its work in promoting international trade law.

(Mr. Mogenson, Denmark)

20. Referring to certain procedural matters, he pointed out that the Commission's agenda items were of a very complex and technical nature and, in most cases, were discussed and resolved at the level of experts. Furthermore, the Commission's work related to international trade law and not legal matters pertaining to public international law, which were the concern of the Sixth Committee. For that reason, the Committee should perhaps limit itself simply to endorsing the report of UNCITRAL, unless the Commission in its report asked for guidance on specific questions regarding its future work.

21. Mr. DELON (France) noted with satisfaction the adoption in 1991 of the draft United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, the result of extensive work begun a decade earlier within the framework of UNIDROIT and continued three years earlier by UNCITRAL. In that regard, he underscored the quality of the drafts prepared within the framework of the working groups, which was possible because of the complementary nature of the many items dealt with in the drafting process and the continuity resulting from 25 years of work. The Convention adopted in Vienna had been inspired by the United Nations Convention on the Carriage of Goods by Sea, to which two new States had just acceded; thus, the total number of parties to the Convention had risen to 19, which encouraged the hope that it would enter into force in the near future.

22. He hoped that a definitive version of the draft Model Law on International Credit Transfers would be proposed in 1992 in order to fill the legal vacuum resulting from electronic funds transfers.

23. The draft legal guide on drawing up contracts in international countertrade transactions would make it possible to complete, with regard to a specific type of transactions, the legal guide on drawing up international contracts for the construction of industrial plants. The Working Group on International Payments could then be able to devote itself to the consideration of the legal problems of electronic data interchange.

24. France fully supported the holding of a Congress on International Trade Law in New York in the context of the twenty-fifth session of the Commission, at which UNCITRAL should reaffirm its participation in the United Nations Decade of International Law and draw up a programme of action in the field of training and assistance, a question which had been the subject of the Regional Seminar on International Trade Law held in Douala (Cameroon) in June 1991, in the organization of which France had played an important role.

25. Mr. TETU (Canada) welcomed the essentially pragmatic nature of the Commission's work, as shown by the draft Model Law on International Credit Transfers prepared by the Working Group on International Payments; the draft constituted an excellent basis for the Commission's work, and he hoped that it would be completed at the twenty-fifth session of UNCITRAL, once the difficulties relating to some of its provisions had been eliminated.

(Mr. Tetu, Canada)

26. With regard to the preparation of a draft model law on procurement, Canada noted with satisfaction the work which had been accomplished up to then by the Working Group on the topic, as well as the efforts made by the Working Group on International Contract Practices with regard to the draft uniform law on guarantees and stand-by letters of credit.

27. With regard to international countertrade and to the draft legal guide on drawing up countertrade contracts, he noted that the Working Group on International Payments had completed its work on the topic; he hoped that the Commission would adopt the guide at its next session.

28. Canada, which prided itself on having been the first State to sign the United Nations Convention on International Bills of Exchange and International Promissory Notes, hoped that more and more countries would accede to the Convention.

29. Canada supported the efforts made by the UNCITRAL secretariat in the field of training and assistance and in the organization of international seminars and symposia; it was to be hoped that the Commission would adopt INCOTERMS 1990 at its next session.

30. Mr. DE SARAM (Sri Lanka) said that there were five subjects under consideration by the Commission and its three Working Groups, namely, the draft Model Law on International Credit Transfers, the draft model law on procurement, the draft uniform law on guarantees and stand-by letters of credit, the draft legal guide on drawing up countertrade contracts and the legal problems of electronic data interchange; all were of much relevance to international trade, a field in which the clarification of existing law was timely and necessary. Sri Lanka supported the recommendations made by the Commission with regard to its future substantive work on those subjects and believed that it was of fundamental importance that all countries, including the developing countries, should participate as fully as possible in activities relating to international trade law, at least those in which the Commission was involved; that did not appear to be the case, in view of the number of countries which had become parties to the five Conventions and to the Protocol drawn up by the Commission, or which had enacted legislation on the basis of the UNCITRAL Model Law on International Commercial Arbitration.

31. It appeared from the Commission's report that the holding of national, subregional and regional seminars might be one of the more promising opportunities for promoting more active participation by the developing countries in the Commission's work; in that connection, he would appreciate receiving advice from the UNCITRAL secretariat as to the financial and other obligations that a developing country was likely to incur in hosting such a seminar.

32. In a developing country like Sri Lanka some initial steps might be taken to facilitate more active participation in the Commission's work. First, a

(Mr. De Saram, Sri Lanka)

contact group should be established to represent all persons and entities concerned with the legal aspects of international trade; secondly, suitable channels should be established to facilitate a speedy exchange of views with the Commission, including, perhaps, with its Working Groups, on questions which might be significant in the context of Sri Lanka's international trade.

33. The Commission's reports, which dealt in large part with the preparation of legal instruments (conventions, model and uniform laws, and so on) and of legal materials (legal guides, and so on), would be placed in libraries all over the world where they could be consulted by those who were working in the field of international trade law and who were often unacquainted with the complex structure of United Nations bodies. Accordingly, Sri Lanka suggested that a clear distinction should be made in each chapter of the Commission's report between the introductory and background passages dealing with the history of an item in the Commission and passages which dealt with the Commission's activities in the 12 months immediately preceding the report. Furthermore, the commentaries on draft articles or other provisions, which were extremely useful, could be placed in separate annexes to the report. Lastly, the various points made in the commentaries could be set out in tabular form under the draft article or other provision to which they referred.

34. Mr. ROSENSTOCK (United States of America) said that the results achieved by the Commission showed that, in the words of the Charter, the United Nations could function as "a centre for harmonizing the actions of nations in the attainment of ... common ends". The Commission's success was due to its secretariat, which cooperated closely with delegations, and to its technical and non-political approach, in contrast to that of other United Nations bodies. It was to be hoped that, in view of the improved international climate, the Commission would continue its efforts to harmonize the law on the basis of the interests of the international community rather than of old or new blocs. Another important factor had been the Commission's innovative working methods, as shown by its report.

35. The United States, for its part, supported the work done by the Commission as well as its future work programme. At its 1992 session, the Commission would need to function at maximum efficiency in order to complete its work on international credit transfers and on countertrade, while reserving one week of the session for the Congress on International Trade Law.

36. Mr. DASTIS (Spain) said that his country supported the general thrust of the draft Model Law on International Credit Transfers and, specifically, its application not only to electronic but also to paper transfers, and to all stages of international transfers. That was in response to the need to establish uniform rules for operations which might be of a hybrid nature. The Commission had considerably improved the draft presented by the Working Group and had made significant amendments to nearly all the articles, including the expansion of their sphere of application to non-bank entities which, as an ordinary part of their business, executed payment orders, the procedure for

(Mr. Dastis, Spain)

varying provisions of the Model Law by agreement and the more precise treatment given to the obligations of the beneficiary's bank. However, major topics remained outstanding, such as the final delimitation of the sphere of application of the Model Law, the determination of the rules on interest payments, provisions governing conditional orders and instructions and all issues relating to applicable law; in any case, it was to be hoped that the Commission would complete its work on the subject at its next session.

37. He noted with satisfaction that the Working Group on International Payments was to study the legal problems of electronic data interchange at its next session. Although technology facilitated the development of international trade, it was essential to create a number of legal and material conditions which could sustain trade. In that connection, the Commission was making a vital contribution to the establishment of such conditions.

38. Firstly, through its work on a uniform law on guarantees and stand-by letters of credit, the Commission was seeking to establish guarantee mechanisms, without which many commercial transactions would not take place owing to the uncertainty about their outcome. Secondly, the draft model law on procurement sought the integration into international trade of the key economic sector of contracts for works and supplies for public entities, in which any contractor, irrespective of nationality, could participate on a non-discriminatory basis; moreover, in such contracts, attempts were made to eliminate as far as possible reservations by States. Thirdly, mention should be made of the legal guide on drawing up countertrade contracts, which were of special importance in some geographical areas where they alleviated the problems caused by scarcity of foreign exchange.

39. The three drafts had been prepared with the participation of delegations from countries at different levels of development, thereby facilitating balanced solutions that took account of the needs of all the parties. Nevertheless, the countries with the least economic resources had been unable to attend the final meetings of the working groups. The Chairman of the Commission had referred to the need to solve the problem, which was attributable to the economic difficulties faced by those countries. Spain hoped that suitable arrangements could be made to ensure that the opinions of those countries could be heard and taken into account both in the Commission's working groups and in its plenary sessions.

40. A growing number of States were ratifying the conventions prepared by the Commission or were drawing inspiration from its model laws. In that connection, on 1 August 1991 the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade had entered into force in Spain.

41. The Commission was faced with an enormous workload, particularly at its 1992 session, when it needed to complete consideration of the draft Model Law

(Mr. Dastis, Spain)

on International Credit Transfers and the legal guide on drawing up countertrade contracts. Since one week of that session would be devoted to the Congress on International Trade Law, which would consider the accomplishments of the past 25 years and the prospects for the forthcoming 25 years in the field of international trade law, it might be desirable to consider establishing working groups or subcommittees which could consider items concurrently.

42. Mr. MOLNAR (Hungary) said that, in view of the urgent need for uniform legislation in the field of international credit transfers, he hoped that the Commission would complete its consideration of the draft model law on that subject at its next session.

43. The establishment of a general legal framework to regulate electronic data interchange, which had become increasingly widespread in world markets, could help to resolve the many difficulties that had arisen in the use of computers in trade. He therefore welcomed the fact that the subject had been referred to the Working Group on International Payments for detailed consideration.

44. His delegation welcomed the progress made by the Commission in the field of training and assistance - activities that were very important for international trade law - and supported the preparation of an extensive programme of training and assistance designed to make the achievements of the Commission more widely known.

45. With regard to the observance of the United Nations Decade of International Law, his delegation hoped that the Commission would further strengthen its programme of work in order to achieve its ambitious goals. The dissemination of international trade law would be one of the chief contributions which the Commission could make to the Decade. His delegation welcomed the proposal to organize a Congress on International Trade Law in the final week of the Commission's session in 1992.

46. He was pleased to note the adoption of the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, which marked the completion of another successful UNCITRAL initiative.

47. Mr. BELLUOUKI (Morocco) said that, as in the past, the most recent session of the Commission had had important results for the development and regulation of international trade, which should be continually modernized and adapted to keep pace with the steady development of technology. It would be necessary, however, for the Commission and its secretariat to bear in mind the need for the interests of the developing countries to be better reflected in the Commission's activities and to assist those countries in participating in meetings of the Commission and of its working groups.

(Mr. Belluouki, Morocco)

48. The draft Model Law on International Credit Transfers, to which Morocco attached great importance, could be of practical use only in a context of general respect for the contractual freedom of the parties. In that connection, and with reference to the articles not yet considered by the Commission, draft article 16, paragraph 1, did not seem to reflect the current practice. In the event of a delay in the receipt of funds by the beneficiary, the beneficiary should claim interest from the originator and not from a receiving bank other than the beneficiary's bank. In any event, if the beneficiary's bank failed to pass on the funds to the beneficiary within a fixed period, it would be directly liable to the beneficiary.

49. All the other work of the Commission - particularly its work on the draft model law on procurement, on the uniform law on guarantees and stand-by letters of credit, and on international countertrade - was of great value. Morocco was pleased with the results obtained so far and looked forward to the completion of the work in question.

50. With regard to legal problems relating to electronic data interchange, the diversity of the applicable rules made it necessary to establish a uniform legal framework while at the same time seeking to plug the loopholes that jeopardized the security of such interchanges. It would also be useful to consider the legal rules on that subject in force in the developing countries.

51. Another key subject was that of training and assistance to help the developing countries become parties to the legal instruments prepared by the Commission and to implement them on an optional basis. The organization of national and regional seminars, such as the one held in Cameroon in 1991, continued to be the most effective way of promoting and disseminating knowledge of the Commission's work. The United Nations Decade of International Law also provided an opportunity to promote and disseminate international law, and to identify new areas in which rules could be codified. It was within that framework that the Congress on International Trade Law, which was to take place in the context of the Commission's twenty-fifth session in 1992, had been organized. The success of the Congress would depend largely on whether it could secure the participation of persons interested in trade law, who represented all the major legal systems and geographical regions of the world.

52. Mr. ASTAPENKO (Belarus) expressed his satisfaction at the adoption of the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, which represented the culmination of many years of work by the Commission and constituted a step forward in the progressive development and codification of international law. The Government of Belarus, which was studying the possibility of signing the Convention, felt that it was appropriate that the resolution on the subject urged States to sign and ratify the Convention.

(Mr. Astapenko, Belarus)

53. His delegation had nothing but praise for the Commission's work. The major topic of the Commission's recent session had been the preparation of the draft Model Law on International Credit Transfers, whose provisions were of great interest to Belarus since the reform and diversification of its banking system and the emergence of new banks called for appropriate legal regulations. The incorporation of the Model Law into the national legislation of Belarus would promote increased participation by the national bank and Belarusian trade in international trade, and his country looked forward with interest to the completion of the relevant work and to the results of the activities of the working groups dealing with procurement and with guarantees and stand-by letters of credit.

54. In fact, all the questions currently on the Commission's agenda were of particular importance for the Republic of Belarus, which had legally consolidated its independence and made its declaration of State sovereignty constitutional. The legislative organs of the country must now draw up legal instruments governing international trade relations; in particular regulations must be promulgated, on the basis of existing law, on the protection of foreign investments, the formation of joint enterprises and many other matters. In that respect, international experience and the advice of experts under UNCITRAL auspices, as well as texts prepared by them, would be extremely useful.

55. Belarus supported the Commission's decision to organize a Congress on International Trade Law to be held in the context of its twenty-fifth session, which would represent an important contribution to the United Nations Decade of International Law.

56. Mr. DONIGI (Papua New Guinea), referring to the draft Model Law on International Credit Transfers, said that in his country there were five commercial banks, only one of them Government-owned. Banking practices were determined by a committee of bankers, and while the Government-owned bank controlled 60 per cent of commercial transactions, the rules governing those transactions had come into existence well before the bank itself. No single Government, least of all the Government of Papua New Guinea, could change those rules, since their application was assumed to be universal.

57. He commended the Commission for its achievements in respect of the draft Model Law on International Credit Transfers. He also expressed support for the Commission's work on the draft model law on procurement, the uniform law on guarantees and stand-by letters of credit and on international countertrade, as well as on the legal problems of electronic data interchange.

58. With regard to the promotion of UNCITRAL texts, his delegation wished to place on record its Government's appreciation of the assistance to be provided by the Government of Australia in sponsoring a seminar to be held in Suva, Fiji, in October, in cooperation with the South Pacific Forum.

(Mr. Donigi, Papua New Guinea)

59. The impressive work of the Sixth Committee and the Commission was further proof of the fact that when all the professionals were assembled together and given a task, a quick and positive result could be assured. The same could not be said of other forums, where political considerations seemed to obstruct or retard the introduction of changes for the benefit of all peoples.

60. Mr. MOHAMMED (Nigeria) said that since its inception the Commission had discharged most creditably the function of coordinating activities in the field of international trade law. The Commission's report on the work of its twenty-fourth session was further testimony of its performance. The report by the Chairman on the plan to help developing countries attend the Commission's sessions was most encouraging. Now that the progressive development of the principles and norms of international law relating to the new economic order was being embarked upon, it was essential that all countries should participate in UNCITRAL sessions and take account of the new realities of global economic interdependence, particularly those of concern to the developing countries, and that the relevant model laws should be more widely acceptable.

61. Nigeria, which had signed most of the conventions emanating from UNCITRAL, noted with great interest the draft Model Law on International Credit Transfers. He commended the UNCITRAL secretariat for organizing regional seminars and symposia on UNCITRAL activities and was pleased to note that a Congress on International Trade Law was being planned to attract various interests in that field.

62. Mr. MARTINEZ GONDRA (Argentina) said that the adoption during the current year of the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade was further proof of the serious and efficient way in which the Commission had worked since the 1970s to unify and harmonize international trade law. Its efforts to achieve practical results with respect to a series of questions of common interest should be emulated by other United Nations organs. With regard to the preparation of a standard communication agreement for world-wide use in international trade, which had been discussed in the Commission in connection with legal problems of electronic data interchange, in his view, while the Commission was the body to which the task should be given, it would be premature to start work on it at the present time, in view of the lack of background information and other international instruments on the subject.

63. At the Commission's twenty-third session, the Argentine delegation, along with other delegations, had made suggestions on the way in which the Commission could contribute to the United Nations Decade of International Law. Although there had been no decision as yet on a definite programme of activities for the Decade, he welcomed, as a first step, the idea of holding a Congress on International Trade Law during the Commission's twenty-fifth session.

(Mr. Martinez Gondra, Argentina)

64. Argentina had consistently advocated greater participation by observers in the sessions of UNCITRAL and its working groups; that would permit direct appraisal of the state of the various projects and facilitate their adoption. Many developing countries would find it difficult to participate, for financial reasons, and urgent measures were therefore needed to assist such participation. One solution might be through contributions to the United Nations Commission on International Trade Law Symposia Trust Fund.

65. Holding seminars and promoting the texts of international conventions prepared by the Commission were important ways of increasing knowledge about international trade law and the work of the Commission. To that end, he urged the Secretariat to coordinate and, where appropriate, to request the assistance of international organizations whose work was linked with international trade law in organizing meetings and seminars on the subject.

66. Mr. MANGUSHO (Uganda) said he hoped that the draft Model Law on International Credit Transfers would be adopted at the twenty-fifth session of UNCITRAL, during which the Congress on International Trade Law would be held. Those two events augured well for the United Nations Decade of International Law.

67. It had been particularly gratifying to his delegation that attempts by some delegations to bias the draft Model Law in favour of particular credit transfer systems and technology levels at the expense of widely prevalent older systems had been unacceptable to the Commission. That was a recognition of the low technical levels of the developing countries' operations in international trade transactions in general and international credit transfers in particular. The universality of UNCITRAL texts had been and must continue to be the test of their acceptability.

68. The competent authorities in Uganda were currently studying the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, adopted in April of the present year, and would take appropriate action on it in due course.

69. Uganda, like many other countries suffering from shortage of convertible currency, was very interested in the work on a draft legal guide on drawing up contracts in international countertrade transactions; it was satisfied with the progress made so far and hoped that the draft would soon be completed.

70. Given the frequency of sessions of UNCITRAL and its working groups and the wide-ranging nature of their work, it would be difficult for a developing country like Uganda to attend all the sessions, let alone ensure the attendance of all the necessary experts. The sooner some form of assistance was effected to alleviate the problem, the better for the true universality of UNCITRAL texts. He hoped that the Secretary-General's report in that regard would produce practical proposals and recommendations.

71. Mr. SONO (Chairman of the United Nations Commission on International Trade Law) noted with appreciation that many delegations had shown interest in and attached importance to the UNCITRAL training and assistance programme, and also the importance attached to the holding of seminars and symposia for the developing countries, which should play a more active part in the Commission's work. It was clearly necessary to give financial assistance to the developing countries for that purpose. He also urged Governments which were in a position to do so to make voluntary contributions to the UNCITRAL Symposium Trust Fund.

72. As many delegations had remarked, economic activities had become more global and integrated, and perhaps the time even of interdependent economies was over. It might therefore be necessary to revise certain criteria which were still based on local regulations in the sphere of private law and of course in the sphere of traditional trade law. It was appropriate that UNCITRAL had proposed, and the Sixth Committee had approved, the holding of a Congress in 1992. That would provide an opportunity of introducing adjustments of concept in certain aspects of the traditional distinction between private law, public law, economic law and international law.

73. The Commission was encouraged by the Committee's strong support and would continue to carry out its task, always adjusting itself to new realities.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (A/46/33, A/46/335, A/46/383)

74. Mr. CALERO-RODRIGUEZ (Chairman of the Special Committee on the Charter of the United Nations and on the strengthening of the role of the Organization), introducing the report of the Special Committee on the work of its 1991 session (A/46/33), said that the Special Committee had been able to conclude its work on a draft Declaration on Fact-finding by the United Nations in the Field of Maintenance of International Peace and Security, on the basis of a working paper submitted by Belgium, Czechoslovakia, Germany, Italy, Japan, New Zealand and Spain. The text of the draft Declaration was contained in paragraph 19 of the report. The Special Committee had arrived at the text after lengthy and careful consideration of each article, in a working group of the whole, and now submitted it for adoption by the General Assembly.

75. The draft Declaration was divided into five parts. Part I defined fact-finding and its characteristics, distinguishing between fact-finding through existing means and the sending of fact-finding missions. Part II dealt with the United Nations organs that might undertake fact-finding activities, particularly through the sending of fact-finding missions, namely the Security Council, the General Assembly and the Secretary-General. Part III dealt more specifically with fact-finding missions and their obligations, privileges and immunities, as well as the facilities that were to be accorded to them by the receiving States. Part IV referred to the role of the Secretary-General in monitoring the state of international peace and

(Mr. Calero-Rodrigues)

security and in making full use of the information-gathering capabilities of the Secretariat and improving such capabilities. Part V contained two safeguard clauses.

76. Still on the question of the maintenance of international peace and security, the delegation of the Soviet Union had presented a document (A/AC.182/L.65) entitled "New issues for consideration in the Special Committee" and a working document on the enhancement of cooperation between the United Nations and regional organizations (paras. 22-46 of the report).

77. The Special Committee had also examined the Secretary-General's final progress report on the preparation of the draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.68), to which the text of the draft handbook was attached. The Special Committee had approved the handbook, which appeared as an annex to its report (A/46/33), and recommended its adoption by the General Assembly. The handbook contained four chapters entitled Principles of the peaceful settlement of disputes between States, Means of settlement, Procedures envisiged in the Charter of the United Nations and Procedures envisaged in other international instruments.

78. In section V of the Special Committee's report reference was made to communications received respectively from the Legal Counsel, on the United Nations Decade of International Law, and from the Chairman of the Committee on Conferences, on the utilization of conference-servicing resources by the Special Committee.

79. The 1991 session of the Special Committee had been a productive one. With the adoption of the draft Declaration on Fact-finding and the completion of the Handbook on the Peaceful Settlement of Disputes between States, the Special Committee had contributed to the United Nations Decade of International Law and to the task of strengthening the role of the United Nations.

80. With regard to the agenda of the Special Committee for its next session, the only matters pending before the Special Committee were the two documents submitted by the Soviet Union which he had mentioned previously. Decision 45/413 of the General Assembly, on the United Nations rules for the conciliation of disputes between States also mentioned the Special Committee, and it would seem appropriate for the Sixth Committee to define the work to be undertaken by the Special Committee in 1992.

The meeting rose at 6.00 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
7th meeting
held on
Thursday, 3 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 7TH MEETING

Chairman: Mr. AFONSO (Mozambique)

CONTENTS

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

This record is subject to correction.
Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, Room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

91-56282 3884S (E)

Distr. GENERAL
A/C.6/46/SR.7
10 October 1991
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 10.10 a.m.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/46/33 and Corr.1, A/46/335, A/46/383)

1. Mr. DELON (France) drew attention to the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and contained in paragraph 19 of the report under consideration (A/46/33). He emphasized the importance of preventive diplomacy and of as thorough a knowledge of the facts as conceivably possible on the part of the organizations which might be involved in conflict prevention since information was fundamental to carrying out the work of the United Nations, and of the Security Council in particular. His delegation endorsed the adoption by the General Assembly of the Declaration because it had the merit both of establishing the rules for United Nations fact-finding activities and of suggesting a number of approaches to the concept of preventive diplomacy.

2. With respect to the peaceful settlement of disputes, his delegation hoped that the General Assembly would approve the publication of the draft handbook on the peaceful settlement of disputes between States, which was both a repertory of practice and a very valuable guide for States.

3. The Special Committee seemed to be in a particularly good position to participate actively in implementing the programme of the United Nations Decade of International Law, in particular in the field of the peaceful settlement of disputes, in which it had developed special expertise.

4. On the question of the future work of the Special Committee, he said that he discerned three major lines of attack. In the field of the maintenance of international peace and security, the working document submitted by the delegation of the Soviet Union and contained in paragraph 46 of the report introduced a matter which, although untested in practice, had been shown by recent events to be very important, namely, strengthening the cooperation between the United Nations and regional organizations. For the first time Security Council resolution 713 (1991) had invoked Chapter VIII of the Charter in calling for United Nations support for the regional organizations involved in efforts to restore peace in Yugoslavia. In the area of the peaceful settlement of disputes, the draft conciliation rules of the United Nations, submitted by the delegation of Guatemala, should assist the Special Committee in its deliberations. Finally, the Special Committee could play a role in implementing the guidelines by which the General Assembly might strengthen its own functioning, in particular through the rationalization of its agenda and the possible consolidation of the activities of the Fourth Committee and the Special Political Committee.

(Mr. Delon, France)

5. In conclusion, he regarded the proliferation of recent initiatives launched under the aegis of the United Nations and the success it had achieved in settling regional conflicts as a sign of the renewed vitality of the Organization and of the resources that the Charter could provide.

6. Mr. LIAO JINCHENG (China) welcomed the completion of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. He wished also to congratulate the Secretariat on the finalization of the draft handbook on the peaceful settlement of disputes between States.

7. The draft Declaration was the first document which systematically established the mandate and procedures for United Nations fact-finding activities. Such activities clearly were implicated in the mandate of the competent organs of the United Nations, as provided, for example, under Article 34 of the Charter with respect to the Security Council. In United Nations practice, however, the Secretary-General himself had also undertaken a number of missions and had played a positive role in the settlement of disputes. Thus, the draft had combined the provisions of the Charter with actual practice of United Nations organs. That represented a positive step towards strengthening the role of the Organization in the maintenance of international peace and security.

8. The text prepared by the Special Committee reflected to a great extent the views of the various countries. It had the merit first of all of striking the necessary balance between the mandate of the United Nations and the rights and obligations of States. In particular, it established the general principle that a United Nations fact-finding mission could be sent only with the prior consent of the State concerned. That was not only in keeping with Article 2 (7) of the Charter but it also helped to develop a climate of confidence between the member countries and the Organization. The second merit of the draft was that it took into consideration the fact that the various organs of the United Nations had responsibilities under the Charter for maintaining international peace: the Security Council, the General Assembly and the Secretary-General each had a role to play in that area.

9. Nevertheless, fact-finding was only one aspect of the work of the United Nations, and not an end in itself. In future, activities for the maintenance of peace should be better coordinated with United Nations efforts to promote international peace and security. The success of fact-finding activities depended to a certain degree on cooperation between the Security Council, the General Assembly and the Secretary-General. Recent history had shown that it was important for the Security Council, in its fact-finding capacity, to intervene in international disputes as early as possible. The fact-finding role of the United Nations would be more effective in future if the three complementary elements were to strengthen their collaboration.

(Mr. Liao Jincheng, China)

10. Each co-sponsor had made an important contribution to the draft Declaration. Each had striven to be positive and constructive. Since the text was therefore the result of the joint efforts of all the delegations, he hoped that it could be adopted at the current session.

11. Since its founding in 1975, the Special Committee had undergone a complex process of development. After having made slow progress for eight years, it had completed two texts since 1984 (the Declaration on the Prevention and Removal of International Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field and the draft currently under consideration by the Sixth Committee), closely linked to international developments. In the meantime, several countries had also adopted pragmatic positions and had worked hard gradually to strengthen the role of the United Nations, on the basis of the Charter. What the Special Committee had achieved in eight years pointed the way for its future work.

12. His delegation believed that, having stood the test of time for over 40 years, the purposes and principles of the Charter of the United Nations had demonstrated their vitality. Yet, the role of the United Nations needed to be strengthened further, an important task facing all countries. China was ready to adopt a pragmatic approach in participating in that endeavour and to do so in a spirit of respect for and accommodation of differences.

13. Mr. YAÑEZ-BARNUEVO (Spain) said that a pragmatic approach offered the best chance of strengthening the role of the United Nations in the maintenance of international peace and security, and the authors of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, found in paragraph 19 of the report of the Special Committee (A/46/33) had clearly understood that reality.

14. The draft Declaration did not create new obligations for Member States, nor did it affect the respective competence of United Nations bodies or the relations between them defined in the Charter. It simply offered a group of policy recommendations intended to strengthen the possibilities stated in the Charter for peace-keeping. Like all texts adopted by consensus, it represented the common denominator of the views of all the States that took part in the discussion. The United Nations bodies and the Member States would have to make the best of the situation by using it to compensate for a deficiency of the United Nations peace-keeping system, to which the Secretary-General had repeatedly referred: the lack of means to maintain an impartial and effective global watch over situations of potential or incipient conflict.

15. As for the title to be given to the draft, "Declaration", which did not have the solemn connotation that some attributed to it, seemed most appropriate, and was in keeping with the tradition of many previous Special Committee texts on the subject.

(Mr. Yañez-Barnuevo, Spain)

16. His delegation welcomed the completion of the Handbook on the Peaceful Settlement of Disputes between States and hoped that it would receive the widest possible distribution in view of the high quality of the information it provided on texts and practice.

17. The decision regarding the future work of the Committee should be structured around two traditional themes: maintenance of international peace and security and the peaceful settlement of disputes.

18. Regarding the former point, he drew attention to a working document submitted by the Soviet Union and reproduced in paragraph 46, which put forward specific proposals to enhance cooperation between the United Nations and regional organizations. Such cooperation should be based on the practical division of responsibilities, taking care to avoid duplication of work and to repair omissions in the spirit of harmony and reciprocal trust advocated by the Secretary-General in his report on the work of the Organization (A/46/1).

19. New possibilities were open to the Special Committee in the area of the peaceful settlement of disputes. His delegation would like it to examine the proposed United Nations conciliation rules submitted by Guatemala, orienting them towards greater flexibility in the wider context of efforts intended to strengthen recourse to conciliation as a means of peaceful settlement. Because of its flexibility, simplicity and informality, conciliation provided an approrpate method for resolving thorny conflicts and for achieving a just and honourable solution for all parties involved. It would be worthwhile to study the Procedure for the Peaceful Settlement of Disputes drawn up at Malta in the Conference on Security and Cooperation in Europe (A/46/335). It represented a good example of conciliation in the broadest sense because of its flexibility and adaptibility.

20. Regarding the strengthening of the role of the International Court of Justice in the peaceful settlement of disputes, his delegation favoured the Secretary-General's suggestion, summarized in his Report on the Work of the Organization (A/46/1), that he should be authorized, like the General Assembly and the Security Council, under Article 96 of the Charter to request an advisory opinion from the Court on the legal aspects of questions within his competence.

21. Mr. ASTAPENKO (Belarus) said that United Nations mechanisms had awakened from a long slumber since the previous session of the Sixth Committee, opening up new prospects in the settlement of regional conflicts, disarmament and coordinated action among States. During that period, the United Nations had proved that it was a genuine universal instrument for solving the problems of humanity. Its role and prestige had increased substantially. The end of the cold war had allowed it to mobilize the efforts of the international community to tackle the practical tasks of implementing the ideals of the Charter, which, as shown by recent events, had stood the test of time.

(Mr. Astapenko, Belarus)

22. However, in the light of the fundamental changes taking place in the world, the mechanisms provided in the Charter would benefit from an in-depth appraisal, given the new challenges. A new reading of the Charter was needed to allow the United Nations to keep pace with developments. The Special Committee had played a major role in that area by addressing questions with direct impact on the key problems of modern policy: safeguarding international peace and security, the peaceful settlement of disputes between States, and enhancing the prestige of the United Nations.

23. In that context, the main achievement of the Special Committee at its last session had been the adoption by consensus of the Draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. Indeed, fact-finding was essential to preventive diplomacy, which was based on intensified peace-making efforts by the Secretary-General, interaction among Security Council members, the endowment of the Council with additional functions, especially formal and informal consultations, and coordination of effort among all members of the international community. His delegation supported the draft Declaration and hoped that it would meet with the approval of members of the Sixth Committee and the General Assembly.

24. Without doubt, the Handbook on the Peaceful Settlement of Disputes between States, prepared by the Secretariat and approved by the Special Committee at its last session, would be useful in preventing and settling international disputes by peaceful means. The General Assembly should therefore adopt that important instrument; it would certainly serve as a reference source not only for States but also for specialists and researchers throughout the world.

25. Today, the United Nations offered the real possibility of in-depth examination of proposals submitted by any Member State without prejudice to their usefulness, particularly those intended to increase cooperation between the United Nations and regional organizations in the maintenance of international peace and security, to call on the Secretary-General more frequently to assist in peacemaking, to broaden the scope of preventive diplomacy and to strengthen collective security mechanisms. Those measures could lead to remarkable results.

26. In conclusion, Belarus reaffirmed its support for the ideals and principles of the United Nations Charter. The possibilities offered under the Charter for strengthening the effectiveness of the Organization were far from exhausted. Without doubt, the will to cooperate in the United Nations now motivating States which had formerly been adversaries would allow the Organization's resources to be fully exploited for the prosperity and peaceful development of humanity.

27. Mr. MARTINEZ GONDRA (Argentina) first analysed the Draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security submitted by the Special Committee. He was pleased to note that the sending of a fact-finding mission would be subject to the prior consent of the State concerned. However, such consent must be stated unequivocally, and a State's silence must not be interpreted as implying consent. Moreover, none of the draft's provisions should be interpreted in a manner that would derogate from or undermine the rights of States under international law.

28. Furthermore, the lists of experts in various fields envisaged in paragraph 14 of the draft should be prepared bearing in mind the relevant provisions of General Assembly resolution 2329 (XXII) on methods of fact-finding and the need to ensure the broadest possible representativeness. Paragraphs 28 and 29 of the draft, on the information-gathering capabilities of the Secretariat, were satisfactory. The inclusion of other considerations in that set of provisions would have risked altering the Secretariat's duties under the Charter.

29. As to the title to be given to the draft, his delegation, after lengthy reflection, had no objection to calling it a "Declaration". It would provide States Members and the competent United Nations bodies with an additional tool for the maintenance of international peace and security, the peaceful settlement of disputes and the prevention and elimination of threats to peace.

30. As to the proposal by the USSR on the enhancement of cooperation between the United Nations and regional organizations, paragraphs 1, 5, 6, 8 and 9 of the text incorporated some of the provisions of Chapter VIII of the Charter and referred in paragraph 14 to the nature of the interaction between the Secretary-General and the leaders of regional organizations. In view of the usefulness of the document, the Special Committee should consider it at its next session.

31. While the Libyan delegation was right to point out that it would be appropriate to enhance the effectiveness of the Security Council, his delegation could not endorse the assertion in that delegation's proposal to that end to the effect that the Council had been rendered incapable of fulfilling the responsibilities assigned to it under the Charter. Indeed, recent events, in particular, decisions adopted by the Council following Iraq's aggression against Kuwait, demonstrated that the Council had been able to overcome the paralysis of the cold-war period and act firmly to repulse aggression. Furthermore, the Council had acted effectively and taken decisions which had contributed to the settlement of a series of regional conflicts (Nicaragua, Namibia, etc.) constituting a threat to international peace and security. Accordingly, there was no reason significantly to modify the procedures or composition of the Council.

32. He welcomed the elaboration of the handbook on the peaceful settlement of disputes between States annexed to the report, for it made a valuable contribution to the United Nations Decade of International Law. As other

(Mr. Martinez Gondra, Argentina)

delegations had noted, the procedure followed in the preparation of the Handbook, which had established close cooperation between the Secretariat and members of permanent missions in New York as a Consultative Group, should be used in similar future endeavours.

33. Perhaps the time had come to consider what new topic should be entrusted to the Special Committee with respect to the peaceful settlement of disputes between States. It might be asked to consider the proposal by Guatemala concerning the United Nations conciliation rules.

34. The view had been expressed that the fact that States did not often have recourse to the International Court of Justice, the main judicial organ of the United Nations, reflected a failing of the system of collective security. That was in fact an erroneous impression. As the report of the Court indicated (A/46/4), five disputes had been submitted to it between 1 August 1990 and 31 July 1991, which demonstrated that it was very busy and that States turned to the Court when they felt it was necessary to do so. Moreover, there were various judicial and extrajudicial procedures for the peaceful settlement of disputes, including arbitration, and States were entirely free to choose whatever method they wished. His delegation was in favour of recourse to the International Court of Justice as long as the States concerned felt that, in the circumstances, that procedure was preferable to any other.

35. Lastly, his delegation believed that the proposal by the Secretary-General that the Assembly should authorize him to seek advisory opinions from the International Court of Justice should be the subject of a careful study assessing the legal and practical consequences and the effect on the existing balance between the major United Nations organs.

36. Mr. VILLEGAS (Mexico) recalled that in July 1991 his country had hosted the first Ibero-American Summit, in which 21 countries had participated. The subject of that gathering had been similar to the topic with which the Special Committee was concerned and clearly was related to the objectives of the United Nations Decade of International Law, as demonstrated by the Guadalajara Declaration, issued as document A/46/317. Those objectives were all the more relevant in an era characterized by far-reaching political and economic change on a global scale, which required not only the strengthening of international law, but also its accelerated development.

37. The fact that 30 delegations had participated as observers in the work of the Special Committee attested to the interest of the Sixth Committee in that body's work. Moreover, since certain official members of the Special Committee had been absent, it would be desirable to give the most assiduous observers full membership status. The most active delegations for some years had included those of Cuba, Chile and Peru, and they should be considered in any discussion of expanding the Special Committee's membership, perhaps also with a view to ensuring more balanced geographical representation.

(Mr. Villegas, Mexico)

38. Although its report did not underscore the point, there could be no denying that the general debate had diminished in importance in the Special Commitee and that some had wished to eliminate it at the last session. That was unfortunate, for the general debate provided an opportunity for dialogue and for assessing international opinion in legal areas which might have an impact on the work of the Special Committee.

39. That having been said, paragraphs 12 and 13 of the report suggested that the general debate had not resulted in a consensus on the institutionalization of the practice whereby four affirmative votes by the permanent members of the Security Council were equivalent to the five votes required by Article 27, paragraph 3, of the Charter. Non-permanent members of the Security Council had questioned that practice on a number of occasions. However, his delegation would not revert to those interpretations in the Sixth Committee, since the Special Committee clearly was not a body responsible for the supervision or defence of the constitutionality of the Charter of the United Nations.

40. He welcomed the draft Declaration in chapter III of the report on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. As to the future title of the draft, no choice should be made yet between "declaration" or "resolution", since lack of time had prevented adequate consultations on that point. The Legal Counsel of the United Nations had offered an opinion on the use of the terms "resolution" and "recommendation". In the light of his analyses, his delegation was prepared to accept "declaration".

41. Among the many qualities of the text, he noted, firstly, that it established an appropriate balance between the United Nations fact-finding bodies; secondly, that it recognized the need for States to collaborate in the exercise of their sovereignty with the competent United Nations bodies; and, lastly, that it established the rule of the prior consent of the receiving State, subject to the provisions of the Charter, a solution which afforded the composition and nature of such missions considerable flexibility.

42. With regard to the Handbook on the Peaceful Settlement of Disputes between States, his delegation agreed that the text should be issued in all the official languages, for, as was noted in paragraph 51 of the report, the Handbook would serve as a useful basis for the drafting of a universal convention on the subject.

43. For the second time the Secretary-General had raised the possibility of augmenting the means available to him for limiting international conflicts and preventing crises, if the General Assembly authorized him to request advisory opinions from the International Court of Justice. That approach was indeed in line with the increase in the Secretary-General's responsibilities and was consistent with the interests of a large number of Member States, since the aim was to multiply and expand the means of preventing the escalation of disputes which had a legal aspect. Recent experience showed how important it

(Mr. Villegas, Mexico)

was to act speedily in such cases. The debate on the Special Committee's report gave an opportunity for discussing the legal questions raised by the Secretary-General - to the extent that they related to the Charter - and it might also be possible to discuss them during consideration of the Decade of International Law.

44. Mexico thought that the Secretary-General should be given the legal means to enable him to work for peace. That was consistent with the content of the letter addressed to the Secretary-General by the Permanent Representative of Colombia (A/46/437), which developed the idea of strengthening the role of the Secretary-General and the General Assembly. Mexico looked forward with very great interest to the guidelines which might emerge from the debate on that question.

45. Mr. SARDENBERG (Brazil) noted that the Special Committee had discharged the mandate entrusted to it by the General Assembly in resolution 45/544 but that it had taken three years to reach agreement on the draft declaration on fact-finding activities. There was no doubt that such a text would strengthen the role of the Organization and thus prevent disputes from deteriorating and threatening international peace and security.

46. It might be wondered why it had been so difficult to reach consensus. The difficulties seemed to result from the revival of ideas which questioned the principle of the sovereign equality of Member States and instead favoured intervention. Some of those ideas were the result of the cold war and had recently faded away. Others, inspired by older practices and diverse interests, were still being upheld. But the legal regime established by the Charter of the United Nations gave no room to that kind of thinking. On the contrary, it rested on the principle of collective action. That was no doubt the reason why delegations had stressed that the Organization's mandate should be defined in such a manner that its missions were conducted with total impartiality; that they should defuse rather than aggravate disputes; that they should not be undertaken without the consent of the receiving State; that they should take into account similar initiatives taken at the regional level; and that they should remain under the control of the General Assembly.

47. The harsh reality which had recently disturbed international peace and security indicated a need both to strengthen the role of the United Nations and to respect the sovereign rights of States. Any intervention set a dangerous precedent which could inspire unlawful acts unless it was conducted strictly in accordance with the Charter. If a State caused an actual threat to peace, the United Nations could and should intervene. The fact of a breach of the peace assured the legality of resort to self-defence or collective action. After years of debate on the definition of aggression there was not even a tiny minority of States which defended the legality of intervention for any other reason. The United Nations should not embark on a course which would cause it to sacrifice legality to more immediate political motivations. The principle of non-intervention could not be subject to loose interpretation

(Mr. Sardenberg, Brazil)

and must be respected by all Member States. The Organization's credibility would otherwise be undermined by a vicious circle, with one intervention justifying another.

48. It had become clear, and it would perhaps become even clearer in the future, that the maintenance of peace was the responsibility of all. The emergence of a more equitable international order led to the expectation of a more important role for international law. For how would it be possible to move from confrontation to cooperation without strengthening the rule of law under the Charter of the United Nations? The United Nations would have to return to the original political intentions of the Charter, which had often been misinterpreted although they presupposed the maintenance of a balance between the prerogatives of the permanent members of the Security Council and respect for the principle of the equality of Member States.

49. With the end of the cold war the measures provided in Chapter VII of the Charter had acquired new possibilities. The Security Council was no longer paralysed by the use of the veto, and its decisions would have increasingly clear effects on Member States. It went without saying that Member States must abide by such decisions, even if they had taken no part in them. Such a trend raised legitimate questions, for ultimately it was the Member States which delegated competence to the Security Council. As the President of Brazil had said in the general debate, it was participation and not coercion that provided the basic stimulus of lawful behaviour.

50. Since the General Assembly and the Secretariat were undergoing reform, consideration should also be given to improving the Security Council, making it more representative and thus increasing the legitimacy of its deliberations. During the forty-fifth session of the General Assembly the question of defining the "sanctions management" procedures had been raised in connection with the Security Council Committee established by resolution 661 (1990). The idea was to enable the Committee to overcome certain difficulties: the lack of guidelines defining the humanitarian circumstances which constituted exceptions to the sanctions regime; the Charter's silence on criteria for assessing the special economic problems confronted by States following action taken by the Security Council; and the choice of the body authorized to interpret the provisions of resolutions and evaluate implementation measures. Those were all examples of what could be done to improve the work of the Security Council.

51. There was also the question of the perceived gap between the activities of the Security Council and those of regional organizations. There appeared to be some ambiguity in the delimitation of the competence of the United Nations and regional organizations. The coincidence of their purposes and principles argued in favour of collaboration between them in accordance with Article 52 of the Charter. But the cold war had influenced the behaviour and the capacity for action of regional organizations. It was perhaps time to redefine their role and recognize their political potential.

(Mr. Sardenberg, Brazil)

52. The paper submitted by the Soviet Union and reproduced in paragraph 46 of the report of the Special Committee dealt with that very problem. It was not yet clear what should be done with the paper, which might constitute a sound basis on which to build the Sixth Committee's work. All Member States should therefore be encouraged to present their views on the question, which the Special Committee would take into account at its next session. Questions might also be put directly to senior officials of regional organizations, who could be invited to address the Special Committee.

53. Brazil welcomed the completion of the draft handbook on the peaceful settlement of disputes between States, which was annexed to the Special Committee's report. The handbook would be a useful tool both to Governments and to academic institutions. His delegation therefore endorsed the proposal that the handbook should be distributed as widely as possible. It also welcomed the initiative of the United Nations Library, which was to publish an extensive bibliography of works on the settlement of disputes between States covering the period 1944 to 1991.

54. There had been a time when the work of the Special Committee was characterized by the length of its general debate. Some delegations had argued that such a debate made little contribution to the Special Committee's work, and indeed only one meeting had been devoted to it in 1991, but it could still be useful. The Brazilian delegation believed therefore that the general debate should be expanded again, as soon as circumstances allowed, so as to secure a wider exchange of views on questions concerning the Special Committee.

The meeting rose at 11.40 a.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
8th meeting
held on
Friday, 4 October 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 6th MEETING

Chairman: Mr. AFONSO (Mozambique)

CONTENTS

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

This record is subject to correction.
Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, Room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

91-56313 3889S (E)

Distr. GENERAL
A/C.6/46/SR.8
11 October 1991
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 10.10 a.m.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/46/33 and Corr.1, A/46/335, A/46/383)

1. Mr. KOURULA (Finland) welcomed the fact that the Special Committee had been able to complete its work on the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security at its most recent session and that it had been able to resolve questions relating to the prior consent of the State to which a fact-finding mission was being dispatched. In that connection, his delegation fully endorsed paragraph 21 of the draft Declaration, which recommended that States follow a policy of admitting United Nations fact-finding missions to their territory. As to the question of the title of the document, it considered the use of the term "declaration" consistent with the practice of both the Special Committee and the United Nations.

2. With respect to the draft handbook on the peaceful settlement of disputes between States, an idea originated by France, his delegation was happy to note that preparations for its publication had been completed, thanks to the efforts of the Secretariat. The draft handbook was an important and concrete contribution by the Special Committee to the United Nations Decade of International Law. His delegation was convinced that it would prove useful to legal advisers, government officials, academics and the general public and hoped that, once published, it would be widely distributed.

3. With those two documents completed, the agenda of the Special Committee warranted careful consideration. A number of proposals had been put forward by various delegations, as well as by the Secretary-General in his latest report on the work of the Organization (A/46/1). In the view of his delegation, there was very clearly work to be done in the Special Committee. For several years the Special Committee had been able to produce documents according to its mandates, and a clearly defined mandate should again be elaborated for its future work. It had been standard practice to entrust the Committee with the preparation of fairly comprehensive documents, and there was no reason not to continue that practice rather than to overload the Committee with several minor questions.

4. At the Special Committee's most recent session, the Soviet Union had presented a specific proposal on the enhancement of cooperation between the United Nations and regional organizations. That question had also been touched on by the Secretary-General in his report on the work of the Organization, in which he stated that the United Nations was not designed to monopolize the maintenance of peace and security, the role of regional arrangements being explicitly recognized in the Charter, but that regional efforts should complement rather than compete with or complicate those of the United Nations. According to the Secretary-General, that required a working

(Mr. Kourula, Finland)

relationship based on mutual rapport between the United Nations and the regional agencies.

5. His delegation shared the Secretary-General's concerns. The provisions of Chapter VIII of the Charter and their interpretation in practice had recently become more pertinent. Regional developments had international repercussions, which was why the Soviet proposal provided a good basis for discussion. However, the Sixth Committee should not content itself with reiterating the relevant provisions of the Charter, but should endeavour to find practical and useful interpretations. Furthermore, it should be aware of the possible political difficulties inherent in the question of enhancing cooperation between the United Nations and regional organizations and should exercise care in selecting the legal aspects to be considered.

6. The idea proposed in the Special Committee's report, of drafting a general convention on the peaceful settlement of disputes was an ambitious one. Regional efforts in that field, such as the Valletta meeting under the auspices of the Conference on Security and Cooperation in Europe, had demonstrated the difficulties inherent in procedures for the settlement of disputes that called for the mandatory involvement of a third party. Peaceful means already existed for settling disputes; the problem was that they were not used. If a decision were made to embark on the drafting of a general convention on the settlement of disputes, it would be essential to emphasize the jurisdictional questions and to strengthen the commitment of States to resort to the various procedures already available. In any event, that question might be more suitably dealt with in the context of the United Nations Decade of International Law. The proposal concerning the development of measures to promote the prevention of armed conflicts was an interesting one, but inasmuch as it included such ideas as preventive peace-keeping, it would be more suitably discussed by the Special Committee on Peace-keeping Operations.

7. In his report on the work of the Organization, the Secretary-General repeated the suggestion that the General Assembly should give the Secretary-General the authority to request an advisory opinion from the International Court of Justice. The suggestion was an interesting one, and it would be worth while for the Special Committee, which had already examined the role of the Court, to consider even in a more general way the possibility of developing the system of advisory opinions.

8. The Secretary-General also underlined the need to supplement Article 50 of the Charter with agreements that created obligations to provide practical assistance to third States adversely affected by sanctions imposed on a State in breach of its obligations under the Charter. Even though each situation was unique and very strict rules would therefore be inappropriate, the existence of general, flexible guidelines on at least some aspects of "sanctions management" might facilitate Security Council action and give Member States a better idea of what was expected of them in such an event.

(Mr. Kourula, Finland)

With respect to the implementation of economic sanctions, for instance, it might be possible to grant exceptions for humanitarian reasons or to recognize the particular economic problems that strict compliance with an embargo could cause for third States. Although the latter instance was recognized in Article 50 of the Charter, its provisions simply noted that the States concerned had the right to consult the Security Council with regard to a solution of their problems. The establishment of general guidelines for dealing with such situations might facilitiate not only the implementation of sanctions as such but also conflict management by the United Nations as a whole. That was but one of the many proposals that had emerged in the discussion on the reform of the United Nations; the issues touched upon in the work on the revitalization of the General Assembly also merited attention.

9. With respect to the proposal to draft rules for the conciliation of disputes between States, his delegation considered it important and endorsed its careful study. It was convinced that such rules would constitute yet another important contribution by the Special Committee to the United Nations Decade of International Law.

10. Mr. FARRUKH (Pakistan), reviewing the events of recent years, welcomed the increasing recourse to the United Nations for solving regional as well as international problems. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had played a significant role within the United Nations system in dealing with such important issues as the peaceful settlement of disputes and the maintenance of international peace and security. He was happy to note that it had completed its work on the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security.

11. In that connection, his delegation believed that whenever the situation so warranted, the Secretary-General should be empowered to establish a fact-finding mission in consultation with the parties concerned and with a mandate from the Security Council or the General Assembly. States in general should cooperate fully with United Nations fact-finding missions dispatched to their territories. Under Article 99 of the Charter, the Secretary-General should also be encouraged and given the discretion to bring the findings of such missions to the attention of the Security Council.

12. Pakistan remained firmly committed to the settlement of international disputes by peaceful means and the promotion of friendly and harmonious relations among States. Conciliation was a proven method of settling disputes and he felt that it had a place among the various other means of settlement, on the understanding that the parties remained free to choose the method they felt was appropriate. The idea of extending to international public law, with the necessary flexibility, the conciliation rules of the United Nations Commission on International Trade Law was an interesting one. Flexibility in any proposed set of norms was an important and essential element of conciliation.

(Mr. Farrukh, Pakistan)

13. The concept of the acceptance of the compulsory jurisdiction of the International Court of Justice was gaining ground. Pakistan had accepted that jurisdiction for the settlement of legal disputes and felt that the rule of law in international affairs should be promoted by greater recourse to the Court.

14. His delegation agreed with the delegation of Argentina that the working paper entitled "New issues for consideration in the Special Committee" (A/AC.182/L.65), presented by the Union of Soviet Socialist Republics at the Special Committee's most recent session, provided a good basis for work on the question of the maintenance of international peace and security. With respect to the working document of the Soviet Union on the enhancement of cooperation between the United Nations and regional organizations, his delegation felt that the role of the regional organizations must be consistent with the purposes and principles of the United Nations as stated in Chapter VIII of the Charter.

15. Pakistan would welcome any initiative to strengthen the role of the United Nations and enable it to carry out its tasks more effectively, but emphasized that consideration must be given to the effective implementation of the collective security provisions of the Charter. Indeed, the effectiveness of the United Nations depended primarily on strict compliance by all Member States with the provisions of the Charter and the resolutions of the Security Council. Although there had been occasions when the United Nations had been unable to live up to its primary responsibility of maintaining international peace and security, its inadequacy in that field could not be attributed to any flaws in the Charter, but rather to the attitude of those who did not abide by the Charter's provisions and failed to implement United Nations decisions.

16. Mr. WOOD (United Kingdom) congratulated the Special Committee on having completed work on the draft Declaration on Fact-finding by the United Nations. For the reasons expounded by the representative of Spain, he considered it appropriate that the term "declaration" should be retained and hoped that, in view of its importance, the draft would be adopted unanimously by the General Assembly.

17. The handbook on the peaceful settlement of disputes between States should be of practical use to all those interested in the subject. It had the great merit of summarizing, in a concise and uncontroversial manner, the whole range of means of settlement available to States, including some less well-known procedures. His delegation hoped that it would prompt States to use the various techniques covered, including recourse to the International Court of Justice. In that regard, he noted that the Secretary-General, in his latest report on the work of the Organization (A/46/1), had reiterated one specific proposal concerning the Court about which the United Kingdom had already expressed serious doubts. However, his delegation remained willing to study any other proposals that would genuinely contribute to enhancing the role of the Court.

(Mr. Wood, United Kingdom)

18. He was pleased to note the success of the Secretary-General's Trust Fund for the International Court of Justice and hoped that contributions would come from as wide a range of sources as possible, including private sources. The Trust Fund needed to be more widely publicized.

19. Since conciliation between States was an important but somewhat neglected field of study, his delegation had read with interest the comments, reproduced in the Secretary-General's report, on Guatemala's proposals concerning United Nations rules for the conciliation of disputes between States (A/46/383). It would support further work on the matter and considered the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to be the best forum for such work. In the comments submitted on their behalf by Luxembourg, the Twelve States members of the European Community expressed doubts concerning three points in the draft conciliation rules: the scope of application of the rules, the necessity of adopting different rules for procedures with one conciliator and procedures with a conciliation commission, and the rules for disputes involving more than two parties. Other aspects of the draft should be considered in due course, inter alia, the role foreseen for the Secretary-General, the provision allowing conciliation commissions to withhold from one party information received from the other and the question of whether conciliation commissions would meet at United Nations Headquarters.

20. The Soviet delegation had put forward some thoughts on possible issues to be considered by the Special Committee, both in its 1990 working paper and in its 1991 working document on the enhancement of cooperation between the United Nations and regional organizations. He noted from paragraph 45 of its report (A/46/33) that the Special Committee proposed to continue its consideration of the Soviet working paper at its next session, before deciding which of the proposals contained in the paper should be included in its agenda. He would not, therefore, comment in detail on the paper at the current stage, except to note that there were important lessons to be learned from recent and ongoing experiences. His delegation did not think it an appropriate time to begin the study of such matters as sanctions management or the question of regional organizations. The Special Committee might consider further aspects of preventive diplomacy, however.

21. His delegation felt that certain minimum criteria should govern decisions to include an item in the Special Committee's agenda. First, there should be general agreement in the Sixth Committee that the item was suitable for inclusion in the agenda. There would be no point in deciding to include an item if it was clear from the outset that there was no general wish to deal with it. Secondly, the Special Committee's agenda should include only those items for which there was reasonable hope that substantive results would eventually ensure. Such results need not necessarily take the form of a legal instrument; in some cases, a study might be more appropriate. What must be avoided were items whose consideration made no practical contribution, for instance, those which merely led to a reiteration or reordering of existing provisions.

22. Mr. GOMA GOUBAIL (Libyan Arab Jamahiriya) said that his delegation was following the work of the Special Committee closely and hoped that it would lead to practical results that would make it possible to overcome the shortcomings or partiality of United Nations organs, particularly those responsible for the maintenance of international peace and security, and to prevent any one of them from imposing its rule on the others, or a small number of States from dominating all the others. The post-war world had seen profound upheavals, including the fall of the Berlin Wall - that symbol of the struggle between two antagonistic and hegemonic super-Powers, each of which had sought, in an all-out arms race, to arm itself with the most destructive weapons - and the emergence of Germany as a major economic Power that also had influence in the political sphere.

23. Europe was embarked on a new policy of cooperation aimed at ensuring its political security and economic unity, colonized peoples had liberated themselves and peoples of the third world yearned for development and prosperity. Countries such as Italy and international organizations such as the Organization of African Unity and the Movement of Non-Aligned Countries had called for the strengthening of the role of the United Nations. The time had come to reflect on the effectiveness of United Nations organs in maintaining international peace and security and on the capacity of the United Nations Charter to respond to new developments. It was imperative, therefore, to revise the Charter, taking a collective, responsible approach and setting aside past errors, so that it could meet the requirements of development and realize the aspiration of peoples to a new world order based on international law, in which force would be outlawed and the rights of the weak would be recognized.

24. The Socialist People's Libyan Arab Jamahiriya had been the first country to urge the international community to seek ways of strengthening the United Nations system and ensuring compliance with its resolutions: it had in fact called repeatedly for a rescinding of the right of veto of the five permanent members of the Security Council which allowed each of them to paralyse the Organization. In criticizing the Libyan proposal, the representative of Argentina had said that the Security Council had demonstrated its effectiveness by implementing its resolutions on the Gulf crisis and the Gulf war. What was important, however, was not the fact that the Council adopted and then implemented its resolutions by one means or another but what happened when those resolutions were implemented. It should be recalled that Libya had condemned the occupation of Kuwait and the use of force, and had proposed a peaceful solution from the outset of the crisis. Yet the Security Council had acted in a selective manner, taking a different position with regard to the occupation of the Arab territories by the Zionist entity and its aggression against the Arab nation and with regard to South Africa, which continued to pursue its policy of racial discrimination against the black majority in that country. His delegation would have liked the Security Council to be less selective in its application of its resolutions. In any event, it could not be said that the Council had always maintained the same position it had taken during the Gulf crisis.

(Mr. Goma Goubail, Libyan Arab Jamahiriya)

25. His delegation wished to reaffirm the importance of democratic participation in international affairs and urged the Special Committee to give careful attention to the proposals Libya had submitted to it: to consider ways to eliminate the adverse consequences for the maintenance of international peace and security of the application of the principle of consensus among the permanent members of the Security Council, which had paralysed it and rendered it incapable of fulfilling the responsibilities assigned to it under the Charter; to pay due regard to the fact that the maintenance of international peace and security was a joint responsibility of all the States Members of the United Nations, regardless of their size, power and resources, in accordance with the principle of sovereign equality and democratic participation in the conduct of international affairs; and to strengthen the role of the General Assembly in regard to the maintenance of international peace and security.

26. In all matters concerning the maintenance of international peace and security, the organs of the United Nations must gather all the necessary facts in a prompt, objective and impartial manner taking due account of the efforts made in that area by the States concerned and by regional organizations. States members of regional organizations should endeavour to settle regional disputes within that framework by peaceful means before submitting them to the Security Council. Fact-finding missions in the region must be approved by the States concerned, since such activities affected their sovereignty.

27. His delegation endorsed the preparation of a handbook on the peaceful settlement of disputes between States which, being based on precedents, would enable the States involved in a dispute to choose the best means of resolving it. Relations between States should be governed by those principles of international law that were linked to the principle of the peaceful settlement of disputes and set out in the first chapter of the draft handbook on the peaceful settlement of disputes between States.

28. With the proclamation of the period 1990-1999 as the United Nations Decade of International Law, his delegation wished to recall that the Libyan Arab Jamahiriya was a party to all human rights conventions and as such endorsed the convening of an international conference on human rights in 1993.

29. Mr. JOEDO (Indonesia) said that the Special Committee had made significant progress on two major items on its agenda, namely, United Nations fact-finding activities and the draft handbook on the peaceful settlement of disputes between States.

30. Fact-finding was a useful mechanism for addressing a particular situation before it led to an outbreak of hostilities; however, it could be used only with the prior consent of the State in whose territory the fact-finding activities were to be carried out. Paragraph 6 of the draft Declaration on

(Mr. Joedo, Indonesia)

Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security rightly prescribed such consent, which had to be given expressly. Paragraphs 20 and 21 of the draft Declaration must not be interpreted as derogating from the sovereign right of every State to choose freely whether or not to grant access to fact-finding missions.

31. With respect to the working paper submitted by the Soviet Union (A/AC.182/L.65), his delegation wished to emphasize that regional organizations played a pivotal role in conflict prevention. In fact, their actions complemented United Nations efforts to negotiate peaceful settlements. One of the most useful functions of regional organizations was undoubtedly to provide their members with a forum for consultation and negotiation in the event of potential or actual disputes. His delegation hoped therefore that the current session would include a fruitful debate on the role of regional organizations in the area of collective security.

32. In the wake of the Gulf crisis and in view of the Organization's steadily growing role in peacemaking, the search for ways and means of ensuring broad and stable support for such activities had become essential. The Secretary-General's proposal to review the powers of the Security Council under Chapter VII of the Charter was a step in that direction, as were the suggestions by some analysts that expanding the membership of the Security Council might be considered, in view of the new political ad geographical realities, and the suggestion that the Security Council should hold periodic high-level meetings to review international political developments and identify potential crisis situations, thereby enhancing the Council's capacity for preventive diplomacy; such meetings would necessitate a strengthening of the Secretary-General's capacity to gather information. Those proposals merited further consideration, and the United Nations Decade of International Law would provide the appropriate framework for that activity.

33. The draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.68, annex) was an invaluable source of information, particularly for developing countries; it should be widely distributed after publication.

34. Finally, his delegation, which had attached particular importance to the work of the Special Committee since its inception, wished to express its appreciation to the Secretary-General for having suggested measures for the reform and restructuring of the United Nations system to enable the Organization to contribute more effectively to the promotion of a better and more peaceful world (A/46/1). The United Nations had been gaining recognition as a multilateral framework that was uniquely suited to the achievement of those objectives; accordingly, the potential of the Special Committee, and thus of the Organization itself, should be utilized to the fullest in order to realize the aspirations that were shared by all peoples.

35. Mr. SAMAD (Afghanistan) said that all efforts aimed at strengthening the role of the Organization must serve the realization of the objectives of

(Mr. Samad, Afghanistan)

maintaining international peace and security and peaceful settlement of disputes. In that regard, the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security and the draft handbook on the peaceful settlement of disputes between States prepared by the Special Committee were of great practical value and would be useful to Governments as well as other institutions.

36. The handbook, which could serve as a basis for further development and codification of international law concerning peaceful settlement of disputes, deserved wide distribution. The enrichment of international law alone, however, could not ensure the strengthening of the role of the Organization and guarantee maintenance of international peace and security. The commitment of all States to respect their international obligations was absolutely essential to the attainment of that objective.

37. Afghanistan was committed to the objectives and principles of the United Nations, which had played a vital role in maintaining international peace and security, and attached great value to the role of the Organization in the peaceful settlement of disputes between States. In that regard, it had signed and faithfully observed the Geneva Accords negotiated under United Nations auspices and it had supported, along with the majority of the Afghan people, the recent five-point statement by the United Nations Secretary-General aimed at finding a peaceful solution to the Afghan problem.

38. Consequently, his delegation firmly supported the further strengthening of the role of the Organization in the maintenance of international peace and security and the peaceful settlement of disputes.

39. Mr. DONIGI (Papua New Guinea), referring to the draft Declaration on Fact-finding by the United Nations in the Field of Maintenance of International Peace and Security contained in the report of the Special Committee (A/46/33), said that his delegation had no strong opinion on the title of the document, but it believed that the English version could be shortened by deleting the words "the field of".

40. Concerning the last line of the preamble, his delegation believed that the word "solemnly", which had given rise to differences of opinion, was inappropriate. The draft declaration did not state a series of facts which Member States must swear to or solemnly declare to be true. Furthermore, to his delegation's knowledge, the term had not been used in comparable documents. After citing several examples, he suggested, that the word "solemnly" should therefore be deleted.

41. Paragraph 1 appeared to state that United Nations organs must add an additional activity, fact-finding, to their statutory activities. The word "organ" was not defined, though it appeared from reading the rest of the document that it was used only to mean the Security Council and the General Assembly. Broadly interpreted, howevever, paragraph 1 seemed to say that all

(Mr. Donigi, Papua New Guinea)

other organs of the United Nations, including the International Court of Justice, should extend their terms of reference to include fact-finding activities. If such was the case, the jurisdiction of the International Court of Justice would thereby be enlarged, which clearly was not the Special Committee's intention. Therefore, he proposed that the words "the competent organs" should be replaced by the words "the Security Council and the General Assembly".

42. In paragraph 2, the term "the present paper" should be replaced with the words "the present declaration". In paragraph 3, the use of the word "timely" was amply justified. Experience had proven that it was necessary to intervene from the outset of a dispute.

43. According to the wording of paragraph 5, sending a fact-finding mission might have the effect of confirming the belief of each party to a dispute in the rightness of its position. Those parties might then adopt irretractable positions that could not be resolved by mediation or consensus. His delegation feared that the words "and should contribute to building confidence and defusing the dispute or situation while avoiding any aggravation of it" might be susceptible to misinterpretation, and suggested that they be deleted.

44. Turning to paragraph 6, his delegation believed that, when considering the question of the consent of the State in whose territory a fact-finding mission would take place, it was necessary to bear in mind the real purpose of such a mission. The question was whether requesting a State's consent to enter its territory amounted to intervention. If intervention was defined as a specific act intended to effect change in the territory of a State, collection of information should not be interpreted as intervention. The Declaration on fact-finding missions should be viewed not as a document validating intervention but as a document facilitating the collection of true information on the facts surrounding a particular dispute. From that perspective, the desirability of creating obstacles to fact-finding missions by requiring the prior consent of the State into whose territory a mission was to be sent could be questioned. It would be preferable to adopt a more positive language, and to provide that consent should not be unreasonably withheld.

45. His delegation believed in the sanctity of the territorial integrity of a State. Yet experience had shown that disputes between peoples within a State had a tendency to involve third parties, adjoining States or peoples of adjoining States. If the dispute concerned the democratic rights of "peoples" within States as recognized by the Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights or other similar instruments, it could be asked if member States should allow fact-finding missions access to their territory only in certain specified situations. Some States, indeed, were not party to the above-mentioned instruments, but those

(Mr. Donigi, Papua New Guinea)

which were parties should be able to say that they had undertaken to provide those rights to their citizens and peoples, and that an impartial report by a visiting United Nations mission would assist their Governments in improving relations and in providing better service to their peoples. United Nations conventions, declarations and resolutions would have no meaning if there was no way of monitoring the extent of their application.

46. His Government believed that indigenous peoples' rights to property and wealth from their land must be recognized by the constitutional framework of a State. In international law, property could only be acquired or transferred by four methods: conquest, occupation, discovery or cession. The age of acquisition by conquest was over. Title to property by occupation, under international law, could only be justified if the property belonged to no one, and it could, therefore, not be justified when property or territories belonged to individuals, groups of individuals or another State. The fact that property or territory was not physically occupied or controlled by the individuals, groups or other State did not justify the application of the principle of acquisition by occupation. In the twentieth century, it should be accepted that there was no longer any ownerless property to be acquired by occupation.

47. The days of discovery had ended when Antarctica had been divided among the States with powerful fleets. Again, acquisition of territory or property by discovery could only be justified if such territory or property was unoccupied or ownerless. Discovery had not begun with the first European explorers. Papua New Guinea had been discovered 50,000 years before the first European came near its coasts.

48. The fourth method of acquisition was by agreement or treaty of cession. That method had been used in a valid way for some countries of the Pacific, for example the Treaty of Cession in respect to Fiji and the Treaty of Waitangi in respect to New Zealand.

49. None of those four methods of acquisition was applicable to Papua New Guinea. Consequently, the rights to property, particularly to resources, of the indigenous populations of countries like Papua New Guinea should be protected if the Charter, the declarations and the various covenants on economic, social, cultural, political and civil rights were to have any meaning.

50. With regard to paragraphs 8 to 11 of the draft declaration, he noted that they contained the words "should consider the possibility of", and he was not sure that that type of language was appropriate. The relationship between the Security Council and the General Assembly was such that the Security Council could act only on matters referred to it by organs of the United Nations or by a State. If that was the case, the paragraphs in question should be worded in such a way as to give the Security Council precise instructions. The current wording gave the Security Council a discretionary power where the organization

(Mr. Donigi, Papua New Guinea)

of fact-finding missions was concerned, and he wondered whether it had in fact been the intention to give the Council that discretionary power. If the rights of "peoples" were really to be protected, care should be taken not to give the Council discretionary powers in that area and, consequently, paragraphs 8 to 11 of the draft declaration should be amended. To that end he proposed amending the phrase "should consider the possibility of undertaking" in paragraph 8 to "should undertake", the phrase "should, wherever appropriate, consider the possibility of providing" in paragraph 9 the phrase "should consider the possibility of undertaking" in paragraph 10 to "should undertake" and the phrase "should, wherever appropriate, consider the possibility of providing" in paragraph 11 to "should, wherever possible, provide".

51. With regard to paragraph 13, bearing in mind the observations he had just made concerning the rights of "peoples", he wondered whether the power to request a fact-finding mission should be limited to States. He believed that that power should be extended to representatives of a distinct people or peoples. That could be provided for by adding, after the word "concerned" in line 2 of paragraph 13, the words "or representatives of peoples concerned".

52. With regard to paragraph 16, his delegation believed that if the amendments which it had proposed to paragraphs 8 to 11 were adopted, the paragraph should be reworded as follows: "In undertaking a fact-finding exercise or mission, due regard should be given by the competent United Nations organ to other relevant fact-finding efforts, including those undertaken by the States concerned and in the framework of regional arrangements or agencies." That wording would have the merit of specifying that in certain cases it might not be necessary to mount a United Nations fact-finding mission and fact-finding could be totally based on impartial reports from other agencies, whether governmental, intergovernmental or non-governmental, as well as on reports from professional organizations.

53. The comment on paragraph 16 applied equally to paragraph 18, namely, that the power to make a request should not be limited to States.

54. With regard to paragraphs 21 and 22, States which had acceded to, or were signatories to, the various United Nations declarations, resolutions and conventions concerning the rights of peoples should be under an obligation to admit United Nations fact-finding missions to their territory. The current wording of paragraphs 21 and 22 should only be applicable to States which had not acceded to, or were not signatories to, those declarations, resolutions and convenants.

55. Paragraph 24 set forth the privileges and immunities enjoyed by the members of missions and indicated that those members were obliged to "respect" the laws and regulations of the State in which they exercised their functions. It was possible, however, to "respect" the laws and regulations of a State while acting within the bounds of those laws in such a way as to

(Mr. Donigi, Papua New Guinea)

hinder the law enforcement agencies of that State in the discharge of their lawful duties and obligations. His delegation suggested, therefore, that paragraph 24 should be amended by inserting the words "not only" after the word "obligation" in line 4 and the words "but also to act in a manner consistent with the least hindrance to the law enforcement agencies in the execution of their lawful duties in the State" after the word "State" in the last line.

56. With regard to paragraph 26, Papua New Guinea believed that the words "has been entrusted to obtain" in line 3 were not appropriate because they implied that the facts were already known, while it was the task of the mission to obtain them. The real intent of that paragraph was to recognize the general principle of law under which the receiving State had the right to be heard in defense or in explanation of the facts as found by the visiting mission. If that was the case, the words "has been entrusted to obtain" should be replaced by the words "has obtained".

57. Paragraph 27, which was designed to guarantee the impartiality of hearings, should be worded in a more positive and directive manner. It would be sufficient to add a second sentence, which would read: "The minimum requirement of fairness is the right of any aggrieved or affected party to be heard without fear or favour."

58. For the reasons set forth with reference to paragraph 2, it would be advisable, in paragraph 31, to replace the words "the present paper is to" with the words "this declaration shall". As to the termination of fact-finding missions, provision should be made for it in the terms of reference of the mission concerned at the time when it was set up.

59. With regard to the working paper submitted by the Union of Soviet Socialist Republics on the enhancement of cooperation between the United Nations and regional organizations, he said that the possibility of establishing regional security arrangements had been considered by some politicians in Papua New Guinea. Consideration had first been given to that issue during the uprising in Vanuatu, when Papua New Guinea had subsequently sent in troops to restore stability. At that time, he had been leading counsel for the opposition leader, who had objected to the sending of troops to Vanuatu by Papua New Guinea, not in principle, but because it could not be established that the Government in power in Papua New Guinea at the time had acted in a manner consistent with international law and with the provisions of the Constitution of Papua New Guinea. He therefore supported the establishment of any regional security arrangements, provided that those arrangements were compatible with the constitutional provisions of each of the participating States. The Government of Papua New Guinea had not, however, considered the issue and it was therefore not possible for his delegation to take a firm position, although it believed that certain associated issues of substance should, nevertheless, be examined by the Committee.

(Mr. Donigi, Papua New Guinea)

60. In the light of his comments on the rights of the "peoples", and noting that paragraph 4 of the working paper made mention of "a local dispute", he wondered whether he could take it that the USSR delegation shared the opinion of Papua New Guinea, namely, that disputes between "peoples" within a State could give rise to regional, as well as international, concerns, and that the paragraph therefore, gave the regional organization a say in disputes between peoples of the same State. If the USSR delegation agreed, it would be logical for the "initiative" referred to in paragraph 6 to include the initiative of the peoples living within the States concerned.

61. Finally, with regard to the handbook on the peaceful settlement of disputes between States, he expressed appreciation to the Chairman of the Special Committee on the Charter, Mr. Calero-Rodrigues, for his efforts, as well as to the Committee members for their outstanding work. The handbook should be disseminated as widely as possible, since it was only through education that the role of the United Nations in promoting liberty, equality and justice could be properly appreciated, recognized and enhanced. The handbook was a notable contribution to the United Nations Decade of International Law.

62. Mr. VILLAGRAN KRAMER (Guatemala), referring to the proposal submitted by the Libyan Arab Jamahariya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security said that while he did not share the view that the Council had not fully discharged the responsibilities assigned to it under the Charter, the other ideas put forward in the proposal merited careful examination. Certainly there was a case for taking a further look at the structure of the Council, on the basis, for example, of the proposals submitted by the Brazilian delegation during the previous session and by the Italian delegation during the current session. While there had been a relationship between the number of States Members of the Organization and the composition of the Security Council in 1945, that was no longer the case. A new situation had also arisen with the coming into being of collective bodies such as the European Community, and also with the proposal for a European confederation. Those were all questions which the Special Committee would be able to consider, since the point at issue was how to adapt the Charter to the new realities.

63. Referring to the proposal submitted by the USSR on the enhancement of cooperation between the United Nations and regional organizations, he remarked that relations between the United Nations and regional organizations had in the past given cause for concern and had raised questions regarding, for example, the circumstances in which the Security Council would exercise authority jointly with the regional organizations and those in which it would play a dominant role, and likewise concerning political situations which were difficult for smaller States to manage. No doubt the distinction between local and other disputes would provide a means of resolving such questions. However, the definition of aggression adopted in 1974 had introduced a new

(Mr. Villagran Kramer, Guatemala)

framework of reference for relations between the United Nations and regional organizations. That definition, which had received very wide acceptance in Latin America, had offered the means by which the debate concerning the respective competences of the Security Council and the Organization of American States could be resolved. Thus it had been agreed that once the act of aggression and its consequences had been established, the competence of the Council was absolute, the only exception being that provided for by the Charter with regard to local disputes.

64. Referring to the situation which had arisen recently in Haiti, he expressed his concern that the Security Council had not chosen to meet to consider a question until such time as the permanent members had seen fit. He feared that, in seeking to strengthen the role of the Security Council or that of the General Assembly, the formulation of rules such as those to be followed in similar circumstances might be overlooked. In that regard, the Soviet Union's proposal merited further consideration.

65. His delegation supported the adoption of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, which was a very well drafted document. Guatemala basically agreed with the comments made by the delegation of Papua New Guinea, in particular concerning the scope of fact-finding activities. For example, Article 2, paragraph 7, of the Charter laid down that the United Nations should not intervene in matters which were within the domestic jurisdiction of States. The question arose as to the circumstances in which the possibility of intervention might be discussed. It appeared that questions relating to human rights were now within the international domain. The question as to whether intervention was to be limited needed to be raised at the time of the preliminary investigation. Should the Security Council be given complete latitude to establish the facts required to clarify a matter or should such activity be made conditional upon States' express consent in all circumstances? There was certainly some lack of clarity in that regard.

66. His delegation joined with the other delegations in recommending the adoption of the handbook on the peaceful settlement of disputes between States, which would be of valuable assistance to foreign ministries and academic lawyers, even though not all the problems relating to the definition and use of terms had been resolved, with particular reference to paragraph 1 of article 36 and paragraph 2 of article 37.

67. Lastly, his delegation expressed its opinion that the debate in the Sixth Committee had made a valuable contribution to the work of the Special Committee and that the Special Committee would respond magnificently if it was entrusted with the task of examining the conciliation procedures of the United Nations.

68. Mr. ZARIF (Islamic Republic of Iran) said that the unprecedented developments in international relations in recent years, most notably the

(Mr. Zarif, Islamic Republic of Iran)

collapse of communism, the end of the cold war and the easing of bloc rivalries had provided the international community, and in particular the United Nations system, with the opportunity of acting to shape the future structure of international relations. That extremely important issue on the international community's agenda was of direct relevance to the subject under consideration, particularly with regard to the principles that should govern the future order and the role that the United Nations was expected to play in shaping the structure of international relations and in coordinating and managing such relations.

69. The Charter and the principles enshrined therein clearly demonstrated that the international community aspired to achieve a world in which not only were peace and security guaranteed but justice, equality, the mutual respect for the sovereignty and territorial integrity of States, along with respect for the cultural and moral values of all nations, were the cornerstones of international relations. Regrettably the system which had prevailed after the Second World War had created major obstacles to the realization of the lofty objectives of the United Nations. However, the end of the bloc rivalries which had obscured those principles and objectives now offered an opportunity to base the future system on the principles of the Charter and give the United Nations a more prominent role to play.

70. The recent admission of seven new Member States to the United Nations, making a total of 166, was a clear indication that the members of the international community wished to have an active presence in the United Nations and was a further sign of their desire to see the United Nations play a central role in resolving world problems of common concern. That desire was mainly the result of the recent successes the United Nations had achieved in the maintenance of international peace and security. It was essential to maintain and even to reinforce that positive trend. It was imperative, therefore, that particular attention should be paid to certain questions.

71. First, given the experience of recent years, it was evident that the Organization could only be revitalized through a democratization which would allow it to avoid domination by the great Powers. The fact that the membership of the United Nations had more than trebled since its formation needed to be reflected in current efforts to revitalize the United Nations. It was imperative also to establish a new balance between the main organs of the United Nations. The Special Committee on the Charter was the most appropriate forum for addressing such issues and finding the means of ensuring the extensive participation of all Member States in the activities of all the organs of the United Nations. That would not only facilitate the implementation of the decisions of those organs, but more importantly, would also increase the Organization's effectiveness and relevance.

72. Secondly, all issues of an international character should be addressed by the United Nations. As the Secretary-General had observed in his report on the work of the Organization, "We still see a dappled international landscape,

(Mr. Zarif, Islamic Republic of Iran)

with large spots of threatened trouble and incipient conflict." All regional issues which had thus far not received due attention should be looked into very seriously; it was important to avoid double standards and to rectify the negligence of the past.

73. Thirdly, the vigorous reaction of the United Nations, supported by the international community, in confronting the invasion and attempted annexation of Kuwait by its neighbour had indeed been a turning point. The Security Council, in discharging its primary responsibility, had made use of its powers under Chapter VII of the Charter and had authorized the use of enforcement measures to restore the independence of a Member State. Meanwhile the Council, in dealing with the crisis in the Persian Gulf, had in practice broadened the scope of the provisions of the Charter with regard to enforcement measures. As the Secretary-General observed in his report on the work of the Organization, "the enforcement action was not carried out exactly in the form foreseen by Articles 42 et sequentia of Chapter VII. ... The experience of operations in the Gulf suggests the need for a collective reflection on questions relating to the future use of the powers vested in the Security Council under Chapter VII." Regarding the use of force in the future, the Secretary-General expressed the view that the Council should "satisfy itself that the rule of proportionality ... is observed and the rules of humanitarian law applicable in armed conflicts are complied with", and he added that careful thought would have to be given to ensuring that the application of the Chapter VII measures was not perceived to be overextended. Those issues were of paramount importance and required careful study by the Special Committee.

74. With regard to the report of the Charter Committee on the work of its 1991 session, he was gratified to see that the Committee had succeeded in completing its consideration of fact-finding activities by the United Nations and had prepared a draft declaration on the subject. The draft Declaration was the result of intensive consultations and, being a compromise text, could not completely satisfy everyone. His delegation had participated actively in the Charter Committee's deliberations on the subject and had put forward various proposals designed to enrich and improve the draft instrument. The final draft before the Sixth Committee was acceptable to his delegation in general, but he wished nevertheless to give a brief outline of his delegation's understanding of some of its provisions.

75. It was evident that fact-finding activities constituted preventive measures aimed at resolving disputes at their early stages in a peaceful manner. Although that aspect was mentioned in the preamble, it was not properly reflected in the provisions of the draft Declaration. It was his delegation's understanding that the Security Council, the General Assembly and the Secretary-General, in undertaking fact-finding activities, would endeavour to ensure that such activities were carried out in the early stages of a dispute in order to find a peaceful solution. That point had not escaped the attention of the Secretary-General, who, in his report on the work of the

(Mr. Zarif, Islamic Republic of Iran)

Organization, had stated: "Too often, the Organization's mediatory or investigative capacity, in situations threatening large-scale conflict, has been kept in reserve while wars have occurred and disputes have festered."

76. Secondly, paragraph 6 of the draft Declaration had addressed one of the key points of the subject, namely the consent of the receiving State in undertaking fact-finding activity, which in the understanding of his delegation included the agreement of the receiving State to the composition of the fact-finding mission.

77. Moreover, the draft did not contain any provision concerning the termination of a fact-finding endeavour. Although proposals had been made to that effect, the Special Committee had not had sufficient time to consider them. His delegation therefore wished to put on record its concurrence with the statement of the Chairman of the Special Committee that "the withdrawal of the consent given by a State would result in the cessation of the activities of the fact-finding mission in its territory".

78. His delegation wished to express its appreciation to the members of the Codification Division for their untiring efforts in the preparation and completion of the draft handbook on the peaceful settlement of disputes between States. Although peaceful means of dispute settlement had been incorporated in many bilateral treaties and agreements, as well as in several multilateral instruments, they had often been ignored by the parties to many of the disputes. As a consequence, conflicts had occurred, causing innumerable human casualties and irreparable damage. His delegation considered that the handbook, which presented a major contribution by the Charter Committee to the activities of the United Nations Decade of International Law, provided a very useful reference tool and it strongly recommended its publication.

79. Mr. HAMAI (Algeria) said he felt that the 1991 session of the Special Committee had undoubtedly been one of its most productive, since it had seen the finalization of two important documents, namely the draft Declaration on Fact-finding by the United Nations and the draft handbook on the peaceful settlement of disputes between States. The spirit of cooperation and conciliation which had reigned within the Special Committee had contributed significantly to that achievement. Nevertheless, there was still scope for improving the two documents, which contained a number of inadequacies, omissions or inaccuracies.

80. By way of example, he cited paragraph 23 of the draft Declaration, which on the one hand stipulated that fact-finding missions had an obligation to respect the laws and regulations of the State in which they exercised their functions and, on the other, that "such laws and regulations should not however be applied in such a way as to hinder missions in the proper discharge of their functions". The two provisions seemed rather contradictory, since it was difficult to reconcile the need to respect the laws and regulations of the

(Mr. Hamai, Algeria)

receiving State with the possibility of derogating from such laws and regulations if they lacked specific provisions to that effect.

81. Nevertheless, bearing in mind the diversity of opinions and interests involved, it would, admittedly, be difficult to agree on provisions which fully satisfied all delegations. His delegation therefore felt that the draft Declaration was on the whole satisfactory. From several points of view, it represented a useful contribution towards strengthening the role of the United Nations in the maintenance of international peace and security.

82. First, the draft established a degree of balance between the competent organs of the Organization. Paragraph 7 empowered the Security Council, the General Assembly and the Secretary-General to undertake fact-finding missions in the context of their respective responsibilities, in other words as laid down in the Charter.

83. Secondly, the text took account of the fact-finding efforts undertaken by the States concerned and in the framework of regional arrangements or agencies. His delegation considered that taking account of national and regional efforts in such a way would make it easier to secure a full knowledge of the facts concerning individual disputes, which would undoubtedly help ensure that fact-finding missions were comprehensive, objective and impartial, as required by paragraph 3.

84. Thirdly, fact-finding missions should be given a clear mandate and their reports limited to findings of a factual nature, refraining from any subjective assessments, which would be by definition contrary to the mission's mandate.

85. Finally, as specified in paragraph 6, the sending of a United Nations fact-finding mission to the territory of any State required "the prior consent of that State". His delegation, like many others, felt that that provision was vital since it established a new procedure capable of strengthening the Organization's role in maintaining international peace and security which could be applied within the framework of the principles laid down in Article 2 of the Charter and in particular paragraph 7 thereof.

86. With regard to the draft handbook on the peaceful settlement of disputes between States, his delegation welcomed the fact that the Special Committee had completed its work on the subject and it endorsed the latter's recommendation that the publication of the handbook should be approved by the General Assembly.

87. His delegation had also taken note of the proposals and suggestions put forward by certain delegations and in due course would contribute to the consideration of those proposals and suggestions, some of which, both old and new, viewed in the context of consideration of the agenda of future sessions of the Committee, could contribute to a promising resumption of its work. It

(Mr. Hamai, Algeria)

was high time that the Committee returned to its original mandate without preconditions or taboos as to what could be discussed. His delegation had always believed that the law should never allow itself to be overtaken by historical developments and it was in the clear interest of all States that the quantitative and qualitative changes continually under way in the international community since the signing of the Charter should be reflected in the machinery, structures and activities of the United Nations.

The meeting rose at 12.25 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
9th meeting
held on
Monday, 7 October 1991
at 3 p.m.
New York

SUMMARY RECORD OF THE 9th MEETING

Chairman: Mr. AFONSO (Mozambique)

later: Mr. TETU (Canada)

CONTENTS

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

This record is subject to correction.
Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, Room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

91-56352 3922S (E)

Distr. GENERAL
A/C.6/46/SR.9
16 October 1991
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 3.10 p.m.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/46/33 and Corr.1, A/46/335, A/46/383)

1. Mr. BERG (Germany) said that in order to enable the United Nations to respond to the demands placed on it, it was necessary to strengthen the position of the Secretary-General and to increase the effectiveness of the Secretariat. Moreover, the discussion and suggestions concerning possible reform of the Charter were evidence of the willingness to prepare the Organization to meet its future challenges. If the Charter were to be amended, his delegation believed that the provisions of Articles 53 and 107, known as the enemy-State clauses, should be eliminated, since they were no longer applicable.

2. The draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19) was a balanced text, which took into consideration both the interests of the Organization and those of States which advocated or hosted a fact-finding mission. By calling for States to adopt a more positive attitude in that field, the draft Declaration helped to defuse tensions at an early stage.

3. The title and the "solemnity" of the Declaration were inspired by the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (General Assembly resolution 43/51, annex). His delegation hoped that the General Assembly would adopt without a vote the draft resolution on the draft Declaration which the sponsors would soon be presenting. At the same time, his delegation could not help but regret the fact, as expressed by the Secretary-General in his report on the work of the Organization (A/46/1), that the pool of information available to the Secretary-General was wholly inadequate and that States seemed reluctant to provide him with the necessary means.

4. The Secretary-General's report also dealt with other issues involving the work of the Special Committee, among them, the recommendation to extend to the Secretary-General the authority to request advisory opinions from the International Court of Justice and the role of regional agreements and regional organizations in the peaceful settlement of disputes. In that connection, the Soviet proposals for the enhancement of cooperation between the United Nations and regional organizations (A/46/33, para. 46) were most useful, since in an increasingly interdependent world, every conflict had aspects which transcended regional boundaries and which might call for action on the part of the United Nations. It would still be necessary to agree on the exact scope of those proposals and to determine whether their thrust was political, or whether they were intended to interpret or even to further develop provisions of the Charter.

(Mr. Berg, Germany)

5. With respect to the draft United Nations rules for the conciliation of disputes between States (A/C.6/45/L.2, annex I), he pointed out - as that matter was also the subject of the draft handbook on the peaceful settlement of disputes between States, of which he wished to commend the great practical usefulness to States and scholars - that a large number of conventions relating to conciliation already existed. A first step, therefore, would be to examine how the proposed rules would add to the existing instruments, bearing in mind the need for flexibility and discretion, which were essential to successful conciliation procedures. The Special Committee should consider that draft at its next session, during its discussion of the general role of conciliation in the peaceful settlement of disputes, with particular attention to the provisions relating to a procedure of the Conference on Security and Cooperation in Europe (CSCE) for the peaceful settlement of disputes set forth in document A/46/335.

6. In conclusion, he stressed that the Special Committee, which played a vital part in the United Nations system, had made a seminal contribution to the United Nations Decade of International Law. He wished also to reaffirm his delegation's desire to continue its active collaboration with the Committee.

7. Mr. DE SARAM (Sri Lanka) said that the draft handbook on the peaceful settlement of disputes between States (A/46/33, annex) would serve as an extremely valuable reference work, which only a handful of legal research and study centres in the world could have produced. Consultations with the Special Committee during the preparation of the draft handbook would have been appropriate; that working method should be kept in mind for similar studies in the future. He hoped that the handbook would be available soon as a United Nations publication, and not just as a United Nations document, and that efforts would be made to ensure that ministries of foreign affairs gave the handbook the attention it deserved. In that connection, letters to Permanent Representatives from the Legal Counsel would be helpful. He also hoped that the Office of Legal Affairs would keep the handbook current by issuing addenda and, after a suitable interval, a second edition.

8. The purpose of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (ibid., para. 19) was to strengthen the United Nations. It gave full recognition to the value of the role played by the Secretary-General in "quiet diplomacy" and consultations and the fact that, in certain cases, other bodies could make important contributions. It did not derogate in any way from the relevant provisions of the Charter of the United Nations, nor did it have an impact on the responsibilities conferred by the Charter on the principal organs of the United Nations. As the Organization gained experience in that field, the Declaration could no doubt be further refined.

(Mr. De Saram, Sri Lanka)

9. He wished to commend the delegation of Guatemala for the initiative it had shown with respect to the United Nations rules for the conciliation of disputes between States (A/C.6/45/L.2, annex I). It should, however, be kept in mind that the principal appeal of conciliation, as compared with arbitration and, more importantly, judicial procedures, was its flexibility and informal nature; care should be taken not to dilute those characteristics by elaborating provisions that were too detailed.

10. With respect to the future work of the Special Committee, he hoped that informal consultations, held before delegations crystallized their positions, would enable members to reach a consensus on priority issues.

11. Mr. VAN DE VELDE (Netherlands) said that like many other delegations, the Netherlands delegation would like to see more flexibility in the draft United Nations rules for the conciliation of disputes between States (A/C.6/45/L.2, annex I); it was often the elements of flexibility and adaptability that persuaded States to use that type of procedure. In that spirit, the application of the rules, as established in article 1, should be widened to include disputes of a purely legal nature, in view of the fact that Article 33 of the Charter included conciliation among the peaceful means for the settlement of "any" dispute. Furthermore, in the English version, the title of Chapter III of the draft rules, which read "Cases in which more than one State has the same interest with regard to the dispute", should be amended to bring it into line with the text of the article, which dealt with disputes to which more than two States were party.

12. As the 12 States members of the European Community had emphasized in the reply submitted by Luxembourg (A/46/383), it was important to strengthen existing structures in the area of conciliation. However, duplication in that field should be carefully avoided by using existing mechanisms, procedures and institutions as extensively as possible.

13. On the premise that the United Nations could provide adequate organizational and administrative assistance in the course of a conciliation process, the draft United Nations rules for the conciliation of disputes between States envisaged a significant role for the Secretary-General. Apart from the potential financial implications of that premise for the United Nations budget, the question might be raised as to whether it was the most appropriate solution. His delegation would like to see regional organizations and other existing institutions involved in the conciliation process, in particular the International Bureau and the Secretary-General of the Permanent Court of Arbitration, which might play a coordinating role. Thus, conciliation procedures would be backed by a support body responsible for organizational and administrative matters. Furthermore, the draft rules might be combined with the provisions of The Hague Conventions for the Pacific Settlement of Disputes of 1899 and 1907, which had been supplemented in 1962 by the Rules of Arbitration and Conciliation for International Disputes between two Parties only one of which is a State. Under such a system, new

(Mr. Van De Velde, Netherlands)

procedures would not be needed and States could benefit from the expertise of the Secretary-General of the Permanent Court of Arbitration and the services of the International Bureau.

14. He stressed that while it was important to make the rules more flexible and to enhance the quality of the procedures, the essential was to promote procedures for the peaceful settlement of disputes.

15. Mr. KASOULIDES (Cyprus) said that the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19) was a positive contribution which would assist in enlarging the scope and increasing the effectiveness of fact-finding missions. His delegation agreed that the term "Declaration" should be used. It also strongly endorsed all means of strengthening the mechanisms used by the United Nations in its efforts to seek solutions to international conflicts, including the occupation of part of the territory of the Republic of Cyprus.

16. He welcomed the completion of the draft handbook on the peaceful settlement of disputes between States (ibid., annex) and hoped that it would be issued and widely distributed. He also welcomed the publication of the bibliography on the peaceful settlement of disputes between States.

17. The Special Committee's future activities should aim to strengthen positive international developments and the new spirit of international solidarity and cooperation and to examine their legal implications.

18. Cyprus had been striving for years to resolve the conflict in that country through peaceful means and the good offices of the Secretary-General of the United Nations. It favoured authorizing the Secretary-General to request advisory opinions from the International Court of Justice. With the object of enhancing cooperation between the United Nations and regional organizations, the working document submitted by the Soviet Union (A/46/33, para. 46) highlighted the important role of regional arrangements in the peaceful settlement of disputes. The many recent initiatives in that area by regional organizations, in particular by the Conference on Security and Cooperation in Europe (CSCE) in Europe and the Organization of American States (OAS) in Latin America, emphasized the need to codify and clarify the working relationship between regional organizations and the United Nations in a spirit of complementarity and not of competition, in order to pool resources and increase effectiveness.

19. In view of the confusion and ambiguity arising from the application of sanctions against Iraq after the Gulf crisis, attention should be paid to such issues as assistance to third countries suffering as a consequence of sanctions, humanitarian aspects, and the elaboration of flexible general guidelines designed to expedite intervention by the Security Council and equitable treatment for all States Members of the United Nations. His

(Mr. Kasoulides, Cyprus)

delegation wished also to endorse the development and codification of the United Nations rules for the conciliation of disputes between States; it was convinced that the Special Committee was the competent body to discharge that task.

20. Mr. TETU (Canada) said that the Gulf crisis had highlighted the fact that the United Nations did not play a strong enough role in conflict prevention, and Canada therefore called upon all Member States to implement the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (General Assembly resolution 43/51, annex).

21. His delegation fully endorsed the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19) which, once adopted, would help provide detailed information about the relevant aspects of a dispute or situation and thus assist the United Nations in carrying out its role in the maintenance of international peace and security. It welcomed the fact that the Special Committee had clarified the role of the Organization without rewriting the Charter.

22. The draft handbook on the peaceful settlement of disputes between States (A/46/33, annex) would prove to be an excellent contribution to the United Nations Decade of International Law. In a world in the throes of depolarization, where, unfortunately, regional tensions still existed, States needed instruments of that type to help them prevent disputes from turning into armed conflicts more than ever. The quality of the handbook ensured that it would prove valuable and effective. His delegation therefore urged all the members of the international community to consult and use it.

23. With respect to the future work of the Special Committee, the working paper entitled "New issues for consideration in the Special Committee" (A/45/33, para. 14), submitted by the delegation of the Soviet Union, could serve as a useful basis for discussion, in particular on the questions of improving cooperation between the United Nations and regional organizations and strengthening the Secretary-General's role in peacemaking. Canada would be pleased to have the Special Committee consider the issue of United Nations supervision of elections as a means of conflict prevention. It would also be appropriate for it to consider the Guatemalan proposal for draft United Nations rules for the conciliation of disputes between States (A/C.6/45/L.2, annex I).

24. Mrs. DASCALOPOULOU-LIVADA (Greece) said that her delegation endorsed the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19), which enhanced the competence of the United Nations by specifying and developing the relevant provisions of the Charter without departing from the text. It attached particular importance to paragraph 13 of the draft Declaration, which

(Mrs. Dascalopoulou-Livada, Greece)

authorized the Secretary-General to consider undertaking fact-finding missions on his own initiative or at the request of the State concerned, and to paragraphs 9 and 11, under which the Security Council or the General Assembly should consider the possibility of providing in their resolutions for recourse to fact-finding. It would also have been appropriate to provide for recourse to fact-finding activities in order to monitor the implementation of the resolutions of those organs. Still, even in their current form, the provisions of paragraphs 9 and 11 would give those resolutions a factual dimension which might, in some cases, contribute significantly to defusing a potential threat to international peace and security.

25. With respect to the future work of the Special Committee, the proposals by the Soviet Union relating to the enhancement of cooperation between the United Nations and regional organizations (ibid., para. 46) merited further consideration. There was a great deal to be explored in that field since regional organizations, in particular the Conference on Security and Cooperation in Europe (CSCE), had made considerable progress in elaborating methods for the peaceful settlement of disputes. The working paper entitled "New issues for consideration in the Special Committee" (A/45/33, para. 14) contained many useful suggestions. In particular her delegation endorsed paragraph 2 (b), which suggested submitting for the consideration of the Special Committee the question of the ways and means of implementing the Charter of the United Nations and the norms of international law as well as related enforcement actions vis-à-vis a State that had breached the peace or failed to comply with Security Council decisions. It was high time that Security Council resolutions ceased being dead letters, as was the case with those relating to the Republic of Cyprus. Her delegation also wished to express its strong support for the idea set forth in paragraph 2 (e), which provided that the Special Committee might consider measures aimed at strengthening the collective security regime provided for in the Charter of the United Nations. In her opinion, the Special Committee should go still further and on the basis of the provisions of the Charter, draw up a declaration on collective security, which would supplement the Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10, annex) and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations (General Assembly resolution 42/22, annex). Such a declaration would define the rules governing collective security, the obligations of Member States and of third States and, above all, the obligations and powers of the organs of the United Nations, in particular the Security Council.

26. The handbook on the peaceful settlement of disputes between States (A/46/33, annex) was complete and easy to use and would certainly prove useful to States, organizations, practitioners and students of international law and international relations.

(Mrs. Dascalopoulou-Livada, Greece)

27. His delegation was in favour of the extension of the mandate of the Special Committee.

28. Mr. Têtu (Canada) took the Chair.

29. Mr. SHEVCHENKO (Ukraine) said that the irreversible changes taking place in the countries of Eastern Europe, the affirmation of a common responsibility for the maintenance of international peace and security and the specific actions taken to strengthen the role of the United Nations gave rise to the hope that members of the international community would soon be inclined to abide scrupulously by the provisions of the Charter and to act on the basis of the primacy of international law and international obligations.

30. It was symbolic that the General Assembly had designated the second decade of the twenty-first century as the United Nations Decade for International Law. The profound changes taking place in the world opened the possibility of at last realizing the dream of former generations that relations between States could be conducted on the basis of the rules of international law. In his delegation's opinion, one of the main contributions of the Decade should be to promote respect for the rules of international law at the national level, including strict respect for the obligations deriving from international instruments. The Decade should make it possible to utilize all the possibilities offered by international law to combat international terrorism and narcotics trafficking effectively. His delegation intended to contribute actively to the achievement of the Decade's goals.

31. The strengthening and full utilization of the possibilities offered by the United Nations with respect to the maintenance of peace were of fundamental importance at the present juncture. It had become essential to examine the possibility of creating comprehensive and effective machinery under Chapter VII of the Charter which would make it possible to react quickly against acts of aggression and threats to international peace and security. There was also growing awareness of the need for preventive measures, which would also entail the existence within the framework of the United Nations of a reliable system of early detection of potential areas of international tension.

32. The draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19) was exceptionally important and it was to be hoped that it would be adopted by the General Assembly at its current session. Defining the principle of fact-finding was a prerequisite to strengthening the peace-keeping capacities of the United Nations. It was important for Member States to accept it, and not to oppose the sending of United Nations missions to their territory. The handbook on the peaceful settlement of disputes between States (ibid., annex) would certainly contribute to a more frequent resort to peaceful methods for the settlement of international disputes.

(Mr. Shevchenko, Ukraine)

33. His delegation was determined to support the United Nations and the basic principles of the Charter. It hoped that the Organization, on the eve of its fiftieth anniversary, would adapt itself to the new conditions of international life. It was proposing the establishment of an environmental safety council and the elimination of some of the Organization's outmoded bodies. It would also be useful to rid the Charter of anachronisms such as the reference to "enemy States". His delegation considered that the Organization's effectiveness could be improved by making full use of the possibilities offered by the Charter for strengthening security and developing international cooperation.

34. The Soviet Union's proposals concerning the enhancement of cooperation between the United Nations and regional organizations (ibid., para. 46) and some of the proposals made by other delegations at plenary meetings of the General Assembly's forty-sixth session were of great interest in connection with the improvement of the Organization's structures and procedures. His delegation shared the view of those representatives who believed that the Special Committee should consider measures to strengthen the system of collective security envisaged in the Charter and was prepared to contribute to strengthening the role of the United Nations in the maintenance of peace and collective security.

35. Mr. RAYA (Philippines) said that, in spite of the positive developments in the world, recent events in the Gulf, in Europe and in Latin America showed that, more than in the past, the international community must maintain its positions of principle firmly, resolutely repudiate the use of force in international relations and demonstrate its interest in the application of the norms and principles of international law. The draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19) and the handbook on the peaceful settlement of disputes between States (ibid., annex) should promote that process.

36. The draft Declaration was important because it provided a comprehensive elaboration and codification of fact-finding. It was understandable that States would insist on their sovereign prerogatives and recognition was therefore required of the need for the prior consent of a State to a fact-finding mission on its territory. The handbook was a summary of the methods of peaceful settlement of disputes. It was to be hoped that it would encourage States involved in a dispute to explore the many methods of peaceful settlement open to them.

37. His delegation had taken note of the proposals put forward by the Soviet delegation on new issues for consideration by the Special Committee (A/45/33, para. 14). It reserved the right to express its views on those proposals at a later stage.

(Mr. Raya, Philippines)

38. His delegation welcomed the draft Rules for the Conciliation of Disputes between States (A/C.6/45/L.2, annex I) and the comments they had elicited (A/46/383). It considered that continued discussion of the question in the Special Committee would be helpful.

39. The time had come to eliminate the last remnants of the cold war and finally to address those conflicts, regional or bilateral, that had thrived under that bygone era. In the new atmosphere of international harmony, States should give greater attention to solving their domestic problems. The benefits that would bring for their own citizens would be the real "peace dividend".

40. Mr. WLOSOWICZ (Poland) said it would be unrealistic to expect all international disputes to disappear completely. What must therefore be done was to promote ways and means of settling them peacefully. From that point of view, fact-finding had already proved its usefulness. It had still to be codified legally, however, and the draft Declaration on Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19) should meet that need.

41. With regard to the question of prior consent by States to the sending of fact-finding missions, his delegation continued to believe that that was an essential requirement for the proper functioning of such missions. In that context, Article 25 of the Charter should not be overlooked, for it remained possible for the time being, in view of current international disputes, that the Security Council might make a decision concerning fact-finding.

42. The Soviet Union's proposal concerning the enhancement of cooperation between the United Nations and regional organizations (ibid., para. 46) was very timely. It was to be expected that regional arrangements would play a prominent role in peace-keeping and peacemaking processes. A clear-cut picture of each region was still needed.

43. The handbook on the peaceful settlement of disputes between States (A/46/33, annex) was an excellent piece of work which would serve as a source of information for practitioners, scholars and students. It should be widely distributed among students of international law and international relations all over the world, translated, if necessary, and regularly updated. It could perhaps be expanded through the inclusion of a list of recent cases or their summaries.

44. Mr. POSADA (Colombia) said that despite the progress made in some aspects of international life towards growing democracy and détente, the world was still living under the constant threat of situations and problems which threatened international peace and security. The United Nations thus still had a vital role to play in promoting the peaceful settlement of disputes and preventing and eliminating factors likely to endanger peace. In order to fulfil that mission it was clear that impartial and timely knowledge of the ins and outs of potentially volatile situations was an absolute necessity.

(Mr. Posada, Colombia)

45. In that context the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19) was an important step forward. It acknowledged that the comprehensive, objective, impartial and timely knowledge of facts likely to constitute a threat to peaceful international relations should be seen as a means for guaranteeing the realization of the aims of the Organization without disregarding the sovereign rights of States. In that context the recommendation contained in paragraph 6 of chapter I of the draft Declaration, according to which the sending of a United Nations fact-finding mission to the territory of any State required the prior consent of that State, should be retained with all that it implied, particularly the acknowledged right of the State concerned to determine in advance, clearly and unequivocally, the conditions for the admission of the mission, its stay and its departure from the territory in conformity with the relevant provisions of the Charter.

46. Furthermore, it was important that the measures proposed in the report of the Special Committee should strike a balance between the Security Council, the General Assembly and the Secretary-General. For purposes of achieving that balance, the General Assembly should play its role as the body in which all States were represented.

47. The principle contained in paragraph 15 of chapter II of the draft Declaration, according to which the Security Council and the General Assembly should, in deciding to whom to entrust the conduct of a fact-finding mission, give preference to the Secretary-General, was also important. To that end it was essential that the Secretary-General should have available the necessary resources to facilitate the fulfilment of his mandate. That was a provision which should be expressly stated in the text of the Declaration.

48. As for the phrase introducing the operative part of the draft Declaration, his delegation considered that exchanges of views should continue in order to reach a formula acceptable to all delegations. It would prefer wording which avoided the adverb "solemnly", since the primarily technical nature of the Declaration did not justify it and because it considered the misuse of the concept of solemnity inappropriate, in that it should be reserved for documents elaborating fundamental principles of international law. It would not, however, oppose any consensus which might arise around the wording proposed by the Special Committee.

49. The handbook on the peaceful settlement of disputes between States (ibid., annex), drawn up by the Special Committee, should be published and distributed in an appropriate way because of its intrinsic and pedagogical worth. In addition, it represented a valuable contribution to the United Nations Decade of International Law.

50. His delegation shared the idea put forward by several delegations that the handbook should be used as the basis for elaborating a universal convention on the peaceful settlement of disputes which would set out precise

(Mr. Posada, Colombia)

rules on the resort to various means of settlement recognized by international law, namely negotiations and consultations, inquiry, good offices, mediation, conciliation and arbitration, judicial settlement and acknowledgement of the compulsory jurisdiction of the International Court of Justice. In that connection, the ideas and proposals which might be put forward by various delegations concerning conventions on specific procedures for the peaceful settlement of disputes, for example the Guatemalan proposal on conciliation, might be brought together in a coherent way with a view to elaborating a general convention based on the handbook's contributions.

51. Even though the Court had before it a growing number of disputes concerning relations between States, his delegation shared the concern expressed by the Secretary-General concerning the inadequate use of the principal judicial organ of the United Nations. One way of contributing to strengthening collective security would be to give the Secretary-General the option of asking the International Court of Justice for advisory opinions. His delegation endorsed the opinion of the Court on the importance that such a possibility would have for the exercise of its functions and hoped that it would be made possible without delay, as it would simultaneously strengthen the International Court of Justice and the function of the Secretary-General.

52. The working paper submitted by the USSR on the enhancement of cooperation between the United Nations and regional organizations (A/46/33, para. 46) merited further consideration. While it felt that regional organizations had a pivotal role to play in the maintenance of international peace and security, his delegation considered that their characteristics, legal instruments and particular attributes should be looked at closely in order better to determine relations with the competent bodies of the United Nations, and especially how they should complement one another. In order to strengthen the role of regional organizations and prevent possible operational problems between them and the United Nations, communication and the exchange of information initiatives between them needed to be improved and the number of joint initiatives increased. For that reason, paragraph 14 of the working document submitted by the USSR was important since it proposed establishing a permanent communication mechanism between the Secretary-General and the leaders of regional organizations relating to problems of common interest.

53. The position of the Latin American countries concerning the role of regional organizations was set out in the document prepared by the Rio Group on a general outline for the revitalization of the United Nations which had been officially transmitted to the Secretariat. The document described the convergence of the aims and guiding principles of regional organizations and the United Nations, a convergence which favoured cooperation between the two bodies.

54. Lastly, his delegation believed that the new world realities justified a reassessment of the role of the Security Council in order to determine the extent to which the excessive concentration of the power to make decisions in the hands of a restricted group of States was compatible with the changing demands of a constantly evolving international community. Colombia, which had

(Mr. Posada, Colombia)

since the creation of the United Nations expressed serious reservations concerning the right of veto contained in the Charter, believed that the time was right to discuss questions concerning the Security Council which for many years had caused unease among many delegations.

55. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that international relations had entered into a period of profound upheaval in which the bipolarity of the super-Powers which had characterized the cold war era was being replaced by an interdependent world dominated by the spirit of cooperation. In that new climate, the role of the United Nations as a unique mechanism for harmonizing the efforts of the members of the international community could only grow. The question that now arose was how to replace a world system based on a balance between opposing forces with a new system of security and cooperation based on a balance of interests. The primacy of law was the essential principle around which the new model of international security should be organized.

56. The United Nations Charter could be seen as a kind of constitution of the international community, the cornerstone of the new world order. That historic document had lost none of its relevance. While it had been difficult to envisage at the time of its adoption the appearance of new world problems such as the environmental threat, international terrorism and the illegal trade in drugs, the humanist ideals and democratic values on which it was based meant that it was still the effective guarantee of the security of the planet. On the other hand, the United Nations and the agencies of the system needed to be adapted to the new world realities and their functioning improved through reforms while taking care not to destroy those structures which had proved their effectiveness. A new reading of the Charter would allow its full potential to be realized and give new substance to the Organization by rationalizing the structures and agenda of its principal organs.

57. It was from that perspective that the work of the 1991 session of the Special Committee should be examined. It had been called on to play an essential role in the process of consolidating international legality. The session's major achievement had been the adoption by consensus of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19). His delegation considered that if the General Assembly adopted the Declaration by consensus, the gathering by the United Nations of the objective facts which were indispensable in order to take balanced and effective decisions would be strengthened. Such an instrument would provide the basis on which to build an extended network of monitoring mechanisms designed to prevent international disputes and conflicts or to settle them without delay. It would also be a concrete contribution to the achievement of the aims of the United Nations Decade of International Law and to the establishment of a climate of predictability, stability and trust in the world.

(Mr. Ordzhonikidze, USSR)

58. The completion of work on the draft handbook on the peaceful settlement of disputes between States was also to be welcomed; its particular merit was that it detailed the nature and principal features of every method of settlement, illustrated with examples taken from real situations. The adoption of the handbook could pave the way for a future general instrument on the peaceful settlement of disputes between States which would take account of the experience accumulated in that field, for example the outcome of the Valletta Meeting of Experts on the Peaceful Settlement of Disputes of the Conference on Security and Cooperation in Europe (see A/46/335).

59. His delegation was pleased to note the general opinion of the members of the Special Committee that the working paper entitled "New issues for consideration in the Special Committee" (A/45/33, para. 14), submitted by the Soviet Union, constituted a good foundation for the future work of the Special Committee on the maintenance of international peace and security within the terms of its mandate. It also welcomed the fact that a majority of Sixth Committee members had endorsed the content of the document and thus considered that the mandate of the Special Committee should be extended to cover consideration of the issues detailed in the document. In formulating its proposals, the Soviet Union had based itself on the principle that there was a need to strengthen the central role of the United Nations and its principal organ, the Security Council, in guaranteeing international peace and the security and stability of States. At the same time, there was a need to improve the practice of settling conflicts and to take full advantage of the possibilities offered by the United Nations with a view to establishing a multilateral structure of preventative diplomacy which would defuse crisis situations.

60. It was vital to establish by common agreement within the United Nations a range of effective methods designed to dissuade any potential aggressor, and to elaborate legal procedures allowing concerted and rapid action against acts of aggression and threats to international peace. Such a mechanism could encompass the various stages of collecting and processing information, the establishment by the Secretary-General of provisions for the possible outbreak of conflict situations, the adoption by the Security Council of varied preventive and, if necessary, coercive measures, in conformity with the provisions of the Charter. In that connection a study should be carried out of the specific elements of such a mechanism, particularly with respect to States making available armed forces to the Security Council (Art. 43 of the Charter) and the role to be assigned to the Military Staff Committee and its regional subcommittees (Art. 47), etc.

61. The Soviet Union considered that the international community should also vigorously protest against the resort to force and the armed conflicts which were occurring inside some countries, promote a democratic solution of their internal problems and ensure respect for human rights everywhere.

(Mr. Ordzhonikidze, USSR)

62. The Soviet Union was deeply convinced that the enhancement of cooperation between the United Nations and regional organizations, envisaged under Chapter VIII of the Charter, was one of the most promising methods of guaranteeing universal security. Regional processes of security and cooperation were moreover developing at an accelerated rate in Europe, Asia, Africa and Latin America. It was important to harmonize without delay the action taken by the United Nations and regional organizations in the fields of disarmament, military policy, economic and social life, the environment and humanitarian activities. Lastly, lessons should be drawn from the European experience and applied to other regions, taking into account of course their specific nature. In that connection, his delegation had submitted at the most recent session of the Special Committee a working paper on cooperation between the United Nations and regional organizations (A/46/33, para. 46).

63. Under conditions of interdependence, the authority and influence of a State depended increasingly on the moral and legal character of its foreign policy. Only a policy which respected law, that was to say, a policy defined by respect for the interests of other peoples and the international community as a whole, could serve a country's real national interests. The end of the era of ideological confrontation created political and legal conditions which would allow the United Nations to become a true centre for coordinating the efforts of nations on a basis of respect for international legality.

64. Mr. FUKUKAWA (Japan) said that the events of the past year had shown that conflict prevention was a matter of highest priority. For that reason, the Japanese Minister for Foreign Affairs had proposed to the General Assembly the establishment of a conflict prevention system based on: substantial strengthening of the Secretariat's ability to monitor constantly and to analyse information relating to possible conflicts; the dispatch of on-site fact-finding missions; the issuance of "early warnings" if the situation so required; and good offices and mediation efforts under the authority of the Secretary-General.

65. His delegation therefore strongly urged that the General Assembly, in a resolution adopting the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, should request the Secretary-General to study ways of improving the Secretariat's capacity to implement the draft Declaration and to report on the outcome of the study to the General Assembly at its forty-seventh session. It believed that the draft Declaration, once adopted, would constitute a major contribution to the United Nations Decade of International Law.

66. His delegation supported the publication and wide dissemination of the handbook on the peaceful settlement of disputes between States (A/46/33, annex) and hoped that it would prove a useful reference not only for academics and government experts on the settlement of disputes, but also for students of international law and for the general public. The handbook represented another important contribution of the Special Committee to the United Nations Decade of International Law.

(Mr. Fukukawa, Japan)

67. It was encouraging to note that the Secretary-General's trust fund to assist States in settling disputes through the International Court of Justice was already being put to use. In that regard, his delegation agreed with the United Kingdom delegation that the fund should be more widely publicized and that contributions should come from as wide a range of sources as possible, including private sources. Japan, for its part, had contributed $55,000 to the fund in the current year.

68. The time had come for the Sixth Committee to consider new topics which should be entrusted to the Special Committee. In light of the Special Committee's experience, his delegation believed that the new items selected should focus on certain specific areas of international peace and security, and that the aim of the Special Committee's work should be to formulate a series of concrete recommendations for enhancing the capabilities of the relevant organs of the United Nations. Such recommendations should be action-oriented and should enjoy broad support. Lastly, the endeavour must be conducted in accordance with the principles set forth in the United Nations Charter. In that regard, he hoped that the Special Committee would, at its next session, engage in a constructive discussion on its programme of work and reach an agreement on a specific agenda to be presented to the Sixth Committee at the forty-seventh session of the General Assembly.

69. It was imperative that all States which valued the United Nations should work with each other and with the Secretary-General to strengthen the role of the Organization. Lastly, his delegation reiterated that the clauses relating to former enemies in the Charter were an anachronism which should be promptly deleted.

70. Mr. ARRIA (Venezuela) said that the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19), by affirming the competence of the General Assembly or the Secretary-General to dispatch fact-finding missions, constituted a clear step forward in broadening the powers of those organs in a field of such importance as the maintenance of peace and, especially, the implementation of measures to counteract the risk of international conflict.

71. It was, however, important to specify that States which exercised complete self-determination had the right to impose conditions on the sending of a fact-finding mission. The requirement of the State's consent, set forth in paragraph 6 of the draft Declaration, included not only acceptance of the mission but also the conditions of its conduct. Thus, any State had the right to withdraw its consent if the circumstances giving rise to the sending of the fact-finding mission changed or disappeared, and such withdrawal of consent could in no way be considered as prejudicial to efforts to settle the dispute or crisis in question.

72. His delegation believed that the enjoyment of immunities and facilities referred to in paragraphs 22 and 23 of the draft Declaration should be subject to the legislation and practice of States.

(Mr. Arria, Venezuela)

73. It associated itself with other delegations in congratulating the Soviet delegation on the working document it had presented on the enhancement of cooperation between the United Nations and regional organizations (ibid., para. 46), since it firmly believed that such cooperation would promote a reduction in international conflicts.

74. The Soviet proposal could, however, be improved. It showed a certain imbalance in so far as it did not assign the same importance to the General Assembly and the Secretary-General, although both were organs of the United Nations which, under the Charter, were called upon to carry out important work in the area of maintaining international peace and security. Moreover, the Secretary-General, in his report on the work of the Organization (A/46/1), had once again deplored the limitation of his powers in those areas. The General Assembly, for its part, was the seat of power of the States Members of the Organization, which were also bound by the Charter to work for the maintenance of international peace and security. Given those facts, the Soviet proposal could be improved by expressly assigning to those principal organs of the United Nations a well-defined role in the area of cooperation with regional organizations.

75. The handbook on the peaceful settlement of disputes between States (A/46/33, annex), which was based on the principles of freedom in choosing the means of settling disputes and of the consent of States to any given means of settlement, constituted, in its balanced presentation, a very useful source of information on mechanisms for settling disputes and their modes of operation, and an important contribution to the dissemination of international public law. Lastly, his delegation proposed that Guatemala's proposal concerning conciliation (A/C.6/45/L.2, annex I) should be submitted to the Special Committee for further consideration.

76. Mr. SANDOVAL (Ecuador) said that the final version of the document concerning fact-finding by the United Nations in the field of the maintenance of international peace and security (A/46/33, para. 19) set forth basic concepts to which his delegation attached great importance, namely the necessity of obtaining the express consent of the State to whose territory a proposed fact-finding mission was to be sent and the right of that State to impose, along with its consent, certain conditions that must be observed by the mission and to take decisions on the composition of the mission. He regretted that there had been no discussion in the Special Committee on the form which the document should take, and, thus, on the question of its final title. His delegation was, however, prepared to support whatever majority opinion emerged on that point in the debate of the Sixth Committee. The usefulness of the document, which he hoped would be adopted by the General Assembly, would depend on the use which States and the principal organs of the United Nations made of the mechanisms for which it provided.

77. His delegation hailed the completion of the handbook on the peaceful settlement of disputes between States (A/46/33, annex). The more it could be

(Mr. Sandoval, Ecuador)

circulated in all the official languages of the United Nations in university and government circles, the more useful it would be.

78. His delegation supported the inclusion of an item on the Guatemalan proposal concerning United Nations rules for the conciliation of disputes between States (see A/C.6/45/L.2 and A/46/383) in the agenda of the 1992 session of the Special Committee.

79. In conclusion, he said it was time to begin planning the future work of the Special Committee and focus efforts on goals to which were in line with contemporary realities.

80. Mrs. DELLUJAN FLORES (Uruguay) said that the draft Declaration on Fact-finding by the United Nations in the field of the Maintenance of International Peace and Security (A/46/33, para. 19) was a balanced document which respected the sovereignty of States by acknowledging the principle of prior consent by the State to whose territory a fact-finding mission was to be sent. In order to strengthen that principle further, the word "express" should be added before "prior consent" in paragraph 6. An objective and comprehensive knowledge of the facts was of paramount importance for the prevention of conflicts. A positive aspect of paragraphs 16 and 30 was that they highlighted the complementary nature of fact-finding activities. Paragraphs 23 and 24 on the immunities and facilities to be accorded to members of fact-finding missions so that they could discharge their mandate more effectively, should contain a reference to international law on the matter, since it included the norms of both treaty law and common law. Her delegation had no objection to the title of the draft Declaration.

81. The working document submitted by the Soviet delegation on the enhancement of cooperation between the United Nations and regional organizations (A/46/33, para. 46) was of interest to her delegation. Her delegation also welcomed the adoption of the handbook on the peaceful settlement of disputes between States (ibid., annex), whose publication would be extremely useful for universities and would also have practical value. The handbook represented a major contribution by the Special Committee to the United Nations Decade of International Law and could serve as a basis for the elaboration of a universal convention on the peaceful settlement of disputes.

82. The proposal to give the Secretary-General the authority to submit requests to the International Court of Justice for advisory opinions, referred to in paragraph 37 of the report, should be adopted. The Minister for Foreign Affairs of Uruguay had echoed that proposal in his address to the General Assembly during the current session.

83. Lastly, her delegation wished to see the mandate of the Special Committee renewed, as it could play a very vital role in ensuring the reforms and revitalization of the United Nations and full respect for international law, a hope expressed by the authors of the Guadalajara Declaration. In the future,

(Mrs. Dellujan Flores, Uruguay)

the Special Committee could consider such questions as the legal framework for the obligation to assist third States that were adversely affected by the implementation of Article 50 of the Charter; the provisions of Chapter VII of the Charter and their implementation in the light of recent events; revision of the norms on the peaceful settlement of disputes so as to make States responsible not only for seeking a solution to disputes in good faith but also for actually settling them; and the possibility of making certain General Assembly resolutions binding.

84. Mr. KAMBOU (Burkina Faso) said that the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/46/33, para. 19) was a very valuable compromise text for dealing with a situation before it degenerated into open conflict and a threat to peace. His delegation was in favour of the adoption of the text, as improved by the discussions in the Sixth Committee. It also believed that the question of preventive diplomacy should be considered in depth by the Special Committee.

85. His delegation welcomed the adoption of the handbook on the peaceful settlement of disputes between States (A/46/33, annex), which should be very widely circulated so that States could refer to it as often as possible in order to resolve their conflicts and preserve peace.

86. Referring to the Special Committee's future programme of work, he said that the handbook could serve as a basis for the Committee's elaboration of an international legal instrument on the peaceful settlement of disputes, which should also take into account economic disputes. The question of enhancing cooperation between the United Nations and regional organizations should be explored in depth. The United Nations should encourage States to use mechanisms for the peaceful settlement of disputes which already existed in their regional organizations and to support those organizations whenever they were involved in efforts to restore peace. Additional resources should be provided to the trust fund established by the Secretary-General in order to assist States that lacked the necessary means for recourse to the International Court of Justice or for implementing its decisions. Burkina Faso, for example, found it difficult to finance the demarcation of its border with Mali, as prescribed by the Court in its decision of 22 December 1986.

87. In conclusion, he said that the Special Committee should consider the question of the strengthening of the role of the United Nations by reviewing the structure of the Security Council so that the Organization would no longer be dominated by the major Powers but rather would become or at least more closely approximate a model of democracy. More balanced participation by States based on individual and collective responsibility in the field of peace-keeping would bolster preventive diplomacy and be more in keeping with the dramatic changes and transformations currently unfolding: the disappearance of opposing blocs, an increased number of members of the General

(Mr. Kambou, Burkina Faso)

Assembly, the trend towards regional communities, etc. His delegation hoped that the idea of democratization of the Organization would take its course. It also wished to be part of the Special Committee and thereby make its modest contribution within the framework of the Decade of International Law.

88. Mr. Afonso (Mozambique) resumed the Chair.

89. Mr. SAENZ DE TEJADA (Guatemala) said that the draft rules for the conciliation of disputes between States, initially submitted by his delegation for consideration by the Sixth Committee, should be referred to the Special Committee, which had more than demonstrated that it had the necessary seriousness and flexibility to conclude work on that aspect of the Charter. Many delegations had also expressed that view during the debate.

90. The CHAIRMAN said that he intended to hold consultations on that proposal. If he heard no objection, he would take it that that was the wish of the Sixth Committee.

91. It was so decided.

The meeting rose at 5.50 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
10th meeting
held on
Tuesday, 8 October 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 10th MEETING

Chairman:	Mr. AFONSO	(Mozambique)
later:	Mr. SANDOVAL (Vice-Chairman)	(Ecuador)

CONTENTS

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

This record is subject to correction.
Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, Room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

91-56382 3893S (E)

Distr. GENERAL
A/C.6/46/SR.10
12 October 1991
ORIGINAL: ENGLISH

The meeting was called to order at 10.15 a.m.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/46/33 and Corr.1, A/46/335 and 383)

1. Mrs. BELLAMINE-DLIMI (Tunisia) said that, in completing its work on the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, the Special Committee had made a substantial contribution to the Organization's efforts in that field. She drew attention to paragraph 7 of the draft Declaration, which gave the Security Council, the General Assembly and the Secretary-General a mandate to undertake fact-finding missions in the context of their respective responsibilities, and to paragraph 28, which called upon the Secretary-General to monitor the state of international peace and security regularly and systematically.

2. Her delegation noted with satisfaction the importance which the draft Declaration attached to preventive diplomacy, as reflected in paragraph 12, which provided for United Nations fact-finding capabilities to be used at an early stage of disputes, since the main purpose of a fact-finding mission was to defuse a crisis.

3. Tunisia agreed with the stipulation in paragraph 6 that the sending of a United Nations fact-finding mission to the territory of any State required the prior consent of that State.

4. Turning to the peaceful settlement of disputes, she said that her delegation welcomed the completion of the draft handbook on that subject. The handbook would be useful as a basis for the elaboration of a general convention on the peaceful settlement of disputes within the framework of the United Nations Decade of International Law. It would also be of assistance to law professors and to diplomats, since it outlined the full range of peaceful means of settling disputes between States.

5. Her country had always endeavoured to promote such means, including conciliation, arbitration and recourse to the International Court of Justice; for example, the dispute between Tunisia and the Libyan Arab Jamahiriya concerning the delimitation of the continental shelf had been submitted to the Court long before the proclamation of the Decade. Accordingly, Tunisia hoped that the handbook would be widely disseminated.

6. With regard to the working paper submitted by the Soviet Union (A/AC.182/L.65), her delegation felt that it offered a good basis for the future work of the Special Committee in the field of the maintenance of international peace and security. She welcomed the paper's recognition of the vital role which regional organizations could play in the prevention of conflicts. It was essential that the efforts of those organizations should be

(Mrs. Bellamine-Dlimi, Tunisia)

integrated with those of the United Nations so as to strengthen collective security arrangements. Likewise, the Security Council should encourage the peaceful resolution of local disputes with the assistance of regional groups. Her delegation believed, however, that greater emphasis should be placed on the role of the General Assembly in the maintenance of peace and security, as mandated by the Charter.

7. With regard to the proposal by Guatemala concerning the draft conciliation rules of the United Nations (A/C.6/45/L.2), her delegation felt that it had two main advantages: first, the model rules which it proposed were readily acceptable to a number of States, and secondly, none of its provisions were binding, as reflected in draft article 1, paragraph 2.

8. Mr. ARROSPIDE (Peru) said that his delegation agreed with others that the title of the draft Declaration should be maintained, although it continued to have doubts concerning the use of the term "solemnly". As shown by the debate on draft articles 6, 20 and 21 there was general agreement that the consent of the State concerned was a prerequisite for the sending of fact-finding missions. In addition, the document appeared to have struck the proper balance with regard to the role of various United Nations organs in the sending and the conduct of such missions.

9. The end of the cold war offered an opportunity to re-examine the role of the United Nations in a more open atmosphere. However, power was increasingly concentrated in the hands of very few countries, while the Security Council and its permanent members were assuming a preponderant role. In view of the persistence and the aggravation of poverty, especially in the developing countries, and the exacerbation of nationalist rivalries, the possibilities for the United Nations to achieve its objectives depended on its capacity to act and to be perceived as an inherently democratic organization, not as the institutional machinery of a unipolar system. Respect for the principles laid down in the Charter, especially the sovereign rights of all States, must be the basis for multilateral action if the Organization was to preserve its capacity for collective action.

10. His delegation welcomed the adoption by the Special Committee of the draft handbook on the peaceful settlement of disputes and hoped that it would be widely disseminated.

11. With regard to the future work of the Special Committee, the Gulf crisis had highlighted the need to give thorough consideration to the respective roles of the organs of the United Nations. The proposals by the Libyan Arab Jamahiriya (A/46/33, para. 14), the Soviet Union and Guatemala could serve as a basis for future deliberations. Peru also believed that the membership of the Special Committee should be expanded so as to reflect more accurately the membership of the United Nations.

12. Mr. TREVES (Italy) said that the draft Declaration was an important contribution to the field of preventive diplomacy and that it should be further elaborated. He drew attention to draft paragraph 15 which recommended that preference should be given to the Secretary-General in the conduct of fact-finding missions, and to paragraph 21, which provided that States should endeavour to follow a policy of admitting United Nations fact-finding missions to their territory. The latter paragraph did not contradict the provision in paragraph 6 that the sending of a United Nations fact-finding mission to the territory of any State required the prior consent of that State. His delegation was of the view that the sending of United Nations fact-finding missions, as provided for in the draft Declaration, did not constitute intervention as envisaged in Article 2, paragraph 7, of the Charter.

13. Turning to the draft handbook on the peaceful settlement of disputes between States, he said that it represented the first concrete contribution to the United Nations Decade of International Law. The handbook would not only be useful in the teaching of international law, but would also assist diplomats in assessing the advantages and the disadvantages of the various peaceful means of dispute settlement available to States. Accordingly, his delegation believed that the handbook should be given the widest possible dissemination.

14. In that connection, he noted that the Secretary-General, in his report on the work of the Organization (A/46/1) had again raised the question of the authority being given to him to submit requests to the International Court of Justice for advisory opinions. While controversial, that proposal deserved consideration.

15. While the Guatemalan proposal concerning the draft conciliation rules of the United Nations should be examined, his delegation would prefer that it be considered together with the proposal to enhance the role of conciliation and to develop "compulsory" conciliation, as outlined in paragraph 155 of the handbook.

16. In addition, careful consideration should be given to the future work of the Special Committee, particularly early in the Decade.

17. In the field of the maintenance of international peace and security, Italy shared the Secretary-General's view that preventive diplomacy should be further explored. Attention should be given to the proposals concerning measures for the prevention of future threats to international peace and security which might take the form either of armed conflicts or of environmental disasters.

18. The Soviet proposal (A/AC.182/L.65) could be considered in connection with further work on Chapter VIII of the Charter, particularly in the light of Security Council resolution 713 (1991) on the role of the United Nations in the crisis in Yugoslavia. However, the Secretary-General's comments in document A/46/1 concerning the need for cooperation and coordination between regional organizations and United Nations agencies should be borne in mind.

(Mr. Treves, Italy)

19. Italy shared the view expressed by the representatives of Finland and the United Kingdom that it was no longer appropriate for the Special Committee to confine itself to exercises which merely repeated existing provisions of the Charter. The time had come to undertake efforts capable of meeting the new challenges confronting the international community.

20. As outlined in his Government's recent statement to the General Assembly, Italy sought the following goals: the elimination of all discriminatory language from the Charter, especially that deriving from the Second World War; the expansion of the Security Council, with an increase in the number of both permanent and non-permanent members and with the selection of the former being made on the basis of objective criteria; the revision of some Chapters of the Charter, such as Chapter VII, on the basis of the principle of active intervention for humanitarian purposes; and the introduction of the system of weighted voting in the General Assembly and the Security Council.

21. Mr. MIKULKA (Czechoslovakia) said that the most recent session of the Special Committee had been one of the most fruitful in that Committee's history and had shown once more that in an atmosphere of enhanced international trust consensus could be achieved even on the most sensitive matters. International events had shown that the choice of the topic of fact-finding had been a judicious one. The draft declaration on the subject followed on logically from a previous declaration by the Special Committee, the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, and, likewise, sought above all to make the best use of United Nations capabilities in that area.

22. At the heart of the draft Declaration was the idea of encouraging the competent United Nations organs to carry out fact-finding activities so as to be in a better position to help maintain international peace and security. Fact-finding missions were emphasized, but fact-finding could take other forms if that seemed advisable.

23. In the course of the preparation of the draft Declaration, the complex problem of the competence of the various United Nations bodies had been considered; a compromise recommendation had been made (draft para. 16), namely, that in considering the possibility of undertaking a fact-finding mission, the competent United Nations organ should bear in mind other relevant fact-finding efforts, so as to avoid any duplication. His delegation had accepted that compromise even though it would have preferred a clear statement giving preference to the Security Council in such cases.

24. The problem of prior consent of States to which missions were being sent had finally been satisfactorily resolved. Such consent was not always necessary, for instance when the Security Council, acting under Chapter VII of the Charter, decided to send a fact-finding mission. It was particularly gratifying that the Special Committee had reached a consensus on several

(Mr. Mikulka, Czechoslovakia)

paragraphs designed to encourage States to give their consent to the sending of such missions.

25. He noted that draft paragraph 26 provided that the States directly concerned should be given an opportunity, at all stages of the fact-finding process, to express their views in respect of the facts the fact-finding mission had been entrusted to obtain.

26. The use of fact-finding missions was justified by the fact that the means at the disposal of the Secretary-General for gathering information did not always meet the needs of the competent organ of the United Nations. It was therefore logical that section IV of the draft should stress the need to make full use of and improve the Secretariat's information-gathering capabilities.

27. Although the draft Declaration represented a compromise, it was a balanced one that retained the positive elements of the original idea.

28. Mr. NEUHAUS (Australia) said that his delegation took particular interest in the work being done on the maintenance of international peace and security. It was logical to anticipate an expanded role for the United Nations in peacemaking or preventive diplomacy: the United Nations must be able to identify potential conflicts, analyse their cause and bring the parties to see how their differences could be resolved while still at the dispute stage.

29. The draft Declaration on Fact-Finding was the product of much thought and debate and set out clearly some important guidelines for United Nations fact-finding missions, while also offering very practical suggestions on how such missions should be accomplished. His delegation hoped that the implementation of the draft Declaration would be of great assistance in identifying potential crises and ensuring that preventive diplomacy was tried before more extreme measures were resorted to. There was room for further exploration of the Secretary-General's powers under the Charter so as to make his mandate more widely understood.

30. The Committee had also produced a most useful handbook on the peaceful settlement of disputes between States. Its enumeration and amplification of the various means of dispute settlement were complementary to the growing importance of the role of the International Court of Justice. Australia hoped that other countries would follow its lead in accepting the compulsory jurisdiction of the Court.

31. His delegation supported further study of Guatemala's proposals concerning conciliation rules. It would be appropriate for the United Nations, and the Sixth Committee in particular, to become a repository of skills in international conciliation.

(Mr. Neuhaus, Australia)

32. The Secretary-General had noted in his report on the work of the Organization that the Charter could not be regarded as immutable. Even within the strictures of the Charter, however, there was considerable scope for allowing the United Nations to carry out its mandate for promoting international peace and security in a responsive manner, without having to engage in potentially divisive amendments to the Charter.

33. Mr. Sandoval (Ecuador), Vice-Chairman, took the Chair.

34. Mr. MOLNAR (Hungary) said that his delegation saw the most significant result of the most recent session of the Special Committee as the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. Hungary supported the provisions in which it was suggested that States should admit United Nations fact-finding missions to their territory and cooperate with them in every way possible. United Nations fact-finding activities could not pose a threat to the sovereignty of States; indeed, by presenting the facts impartially, they could be used to protect States' legitimate interests.

35. His delegation hoped that the draft Declaration would be adopted at the current session of the General Assembly and expected that wide use of the fact-finding mechanism would help strengthen the role of the United Nations in the maintenance of international peace and security.

36. With regard to the peaceful settlement of disputes, Hungary had consistently advocated strengthening that cardinal principle of international law. His delegation was pleased that States were increasingly willing to take advantage of third-party dispute settlement mechanisms and supported the efforts of the international community to enhance the effectiveness of the International Court of Justice, the principal judicial organ of the United Nations.

37. The draft handbook on the peaceful settlement of disputes between States would help increase compliance with international law by providing States with a guide to settling their disputes. It would also provide valuable reference material for researchers and academic institutions.

38. The working paper submitted by the Soviet Union on new issues for consideration in the Special Committee deserved attention, and some of the issues might become topics for discussion. At the same time, any new item should not lead to duplication of effort or interference with the work of other United Nations bodies.

39. Ms. KOFLER (Austria) said that, in times of growing global interdependence, local or regional conflicts might develop into serious threats to international peace and security; the completion of the draft Declaration was therefore most welcome. Her delegation particularly welcomed paragraph 21 of the draft, appealing to States to follow a policy of admitting United Nations fact-finding missions to their territory.

(Ms. Kofler, Austria)

40. Her delegation noted with satisfaction the completion of the handbook on the peaceful settlement of disputes between States, which would undoubtedly prove useful to scholars and practitioners alike; it certainly also constituted a valuable contribution to the United Nations Decade of International Law.

41. With respect to the proposal on United Nations rules for the conciliation of disputes between States, Austria welcomed any proposal intended to strengthen the principle of the peaceful settlement of disputes. As conciliation was the procedure most likely to be accepted by the parties to a dispute, it seemed appropriate to elaborate United Nations conciliation rules which could easily be integrated into individual conciliation agreements.

42. The draft rules differentiated between the functions of a sole conciliator and those of a conciliation commission. That approach should be reconsidered in the framework of the Sixth Committee.

43. The question of the tasks to be assigned to the Committee in the future deserved careful consideration. With respect to the criteria for such assignment, her delegation fully supported the ideas recently put forward by the representative of the United Kingdom. It would be counter-productive to include items that could never be agreed on within an acceptable time-frame. That did not mean that the Committee should shun difficult, even controversial issues, provided that the political circumstances indicated that the majority of States were willing to embark upon a meaningful negotiating exercise at the end of which an appropriate result could be achieved. In that regard the ideas brought forward by the delegation of the Soviet Union merited careful attention and consideration.

44. Her delegation believed that consideration of all issues related to peaceful settlement of disputes should be left to the Working Group on the Decade of International Law. The Special Committee should concentrate on proposals which had a direct bearing on the role of the United Nations in the maintenance of international peace and security and would strengthen its role in that respect. The proposal to study the role of regional organizations in the maintenance of international peace and security, taking into account the provisions of Chapter VIII of the Charter, seemed to her delegation to be of great practical significance and suited for an in-depth analysis by the Special Committee.

45. Mr. ELARABY (Egypt) said that the General Assembly should adopt the draft Declaration. His delegation was also in favour of the publication and immediate dissemination of the draft handbook on the peaceful settlement of disputes between States.

46. With regard to the Special Committee's future role and undertakings, that Committee must examine new proposals for inclusion in its agenda. The substantive proposals made by the Soviet Union could form the basis of a

(Mr. Elaraby, Egypt)

long-term programme of work for the Special Committee. The Special Committee had, however, been unable to pursue the matter further owing to lack of time. The Soviet proposal regarding the relationship between the United Nations and regional organizations was an issue of vital concern, as world events in recent years had demonstrated. Mindful of the importance of cooperation, Egypt felt that regional organizations should be encouraged to play a more active role in maintaining international peace and security, an issue which the Special Committee was qualified to tackle. Furthermore, Egypt believed that the Special Committee's poor record in enhancing implementation of the United Nations Charter and the rules of international law merited special attention, and emphasized the fruitful lessons to be drawn from the recent experiences in the Gulf.

47. Egypt also advocated a re-examination of the United Nations Charter with a view to strengthening the role of the Secretary-General and encouraging more preventive diplomacy, so as to avoid the escalation of disputes which could ultimately threaten world peace and security. In that connection, consideration should be given to the Secretary-General's suggestion that his authority to request advisory opinions from the International Court of Justice should be extended. The Soviet working paper again formed a good basis for discussion of the issue. Egypt also endorsed the consideration of any proposal, such as the one made by the Guatemalan delegation in 1990, which reinforced the principle of the peaceful settlement of disputes. The Special Committee was uniquely qualified to play an important role in restructuring the United Nations and discussing the issues of international security and the peaceful settlement of disputes. In so doing, it should avail itself of the opportunities provided by current developments in order to serve the purposes of the United Nations.

48. Mr. VOICU (Romania) said that the most recent session of the Special Committee had been productive and had provided further encouraging evidence that, since the end of 1989, the world at large, and the United Nations in particular, had entered a new phase of their history. The language of the cold war had already been superseded, and new and promising notions, such as that of a "new world order" had become a familiar part of political vocabulary. The renaissance of the United Nations was convincing proof of a genuine qualitative change in the attitudes and perceptions of Member States, and the effectiveness of the Organization was no longer in doubt.

49. As part of its intensive work, the Special Committee had completed its mandate in an important sector of preventive diplomacy by producing a draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, a project which his delegation had supported from the outset and to whose preparation it had contributed. The resulting draft was balanced and realistic in that it subscribed to the requirements of comprehensiveness, objectivity, impartiality and timeliness. It should be emphasized that the sending of a United Nations fact-finding mission to the territory of any State required the prior consent

(Mr. Voicu, Romania)

of that State, subject to the relevant provisions of the Charter. Those requirements should be interpreted in their proper context, which was cogently recalled in the preambular part of the draft by the clear recognition of "the need for States, in exercising their sovereignty, to cooperate with the relevant organs of the United Nations in regard to fact-finding missions undertaken by them".

50. Particularly important and topical provisions were to be found in paragraphs 15, 28 and 29. The functions of the Secretary-General which were so clearly formulated in those paragraphs should not be isolated from the actual practice to be followed in their performance. In that connection, the Secretary-General himself, in his report on the work of the Organization (A/46/1), recalled that the main problem with regard to preventive diplomacy was the lack of means at the disposal of the United Nations to maintain an impartial and effective global watch over situations of potential or incipient conflict. That being the case, he agreed with the Secretary-General's conclusion that it was hard to visualize how the Secretariat could monitor potential conflict situations from a clearly impartial standpoint. The General Assembly and the Security Council must recognize the importance of translating preventive diplomacy into "a working reality", as the Secretary-General had put it. In order to enhance the Secretary-General's capacity and authority in that regard, it would be advisable to designate, within the Executive Office of the Secretary-General, an appropriate focal point for fact-finding in the field of the maintenance of international peace and security. Such a practical step would be fully consistent with the draft Declaration on Fact-finding, which would be adopted by the General Assembly at the current session, and with the Secretary-General's legitimate request for renewed emphasis on the need for preventive diplomacy. In that connection, he concurred with the remarks made by the representative of Japan at the 9th meeting of the Sixth Committee.

51. His delegation welcomed the completion of the draft handbook on the peaceful settlement of disputes between States, which represented an important and concrete contribution to the United Nations Decade of International Law. He reiterated his delegation's suggestion that General Assembly decision 44/415 on the resort to a commission of good offices, mediation or conciliation within the United Nations should be more clearly reflected in the final version of the handbook. That decision contained a set of useful guidelines which would be relevant for various chapters of the handbook and should not be reduced merely to a footnote buried in the body of the text. He shared the view that, after appropriate updating, the handbook should be published and distributed as widely as possible.

52. As to the agenda of the Special Committee for 1992, his delegation believed that that Committee should concentrate on two major issues: the maintenance of international peace and security, and the peaceful settlement of disputes. That task had been facilitated by a proposal put forward at the Special Committee's most recent session by the delegation of the Soviet Union,

(Mr. Voicu, Romania)

which was reproduced in paragraph 46 of the report. The proposal, which related to the enhancement of cooperation between the United Nations and regional organizations, deserved careful consideration.

53. He drew attention to the very timely proposal put forward in the Sixth Committee by the delegation of Finland in connection with the implementation of Article 50 of the Charter of the United Nations. The issue was a matter of priority for a number of countries, and 21 Member States, including Romania, had submitted an aide-mémoire to the Security Council explaining their situation as countries seriously affected by the imposition of sanctions against Iraq under Security Council resolution 661 (1990). As the Secretary-General had rightly emphasized, in today's conditions of economic interdependence, the effect of the imposition of comprehensive economic sanctions on third States that were economic partners of the offender State required that Article 50 of the Charter should be supplemented by appropriate agreements creating obligations to assist concretely the disadvantaged third State or States. The subject could not be neglected in the context of the implementation of economic sanctions and in planning the future work of the Special Committee.

54. The Guatemalan proposal regarding the draft rules for the conciliation of disputes between States would constitute an appropriate subject for consideration within the framework of the United Nations Decade of International Law, and could also be discussed by the Special Committee if there was general agreement to do so. However, his delegation favoured a clear-cut mandate for the 1992 session of the Special Committee and expressed the hope that, through informal consultations, the Sixth Committee would find a consensus solution which would enable the Special Committee to continue its valuable work on strengthening the role of the United Nations, in full consonance with the current requirements of the members of the international community.

55. Mr. ADANK (New Zealand) said that progress within the Special Committee had always tended to be subject to the vagaries of the prevailing international climate. While there had been important achievements in the first decade of the Special Committee's existence, progress had too often been slow. However, in recent years the Committee's work had been greatly facilitated by the renewed spirit of cooperation in international relations, and his delegation was particularly pleased with the positive results achieved at its most recent session. In particular, both the draft Declaration on Fact-finding and the draft handbook on the peaceful settlement of disputes between States constituted timely and positive contributions to the United Nations Decade of International Law.

56. In the aftermath of the Gulf conflict there was a greater recognition of the need for the United Nations to play an enhanced role in the field of preventive diplomacy, and the draft Declaration on Fact-finding represented an important development in that area, providing general principles and guidance

(Mr. Adank, New Zealand)

on United Nations fact-finding activities. Adoption of the draft Declaration by the General Assembly would thus be a positive step.

57. His delegation welcomed the finalisation of the handbook on the peaceful settlement of disputes between States, and in particular the fact that the views of Member States had been taken into account in the drafting and revision of the handbook. The information it contained demonstrated strikingly the wide range of dispute settlement procedures available to States, and its comprehensive nature should ensure that it became an important reference point for States and for international lawyers and students.

58. With regard to the future work of the Special Committee, he said that he agreed with the suggestion that the Special Committee should concentrate on two focal points, namely the maintenance of international peace and security, and the peaceful settlement of disputes. In the case of the latter topic, it would seem logical for the Special Committee to devote detailed consideration to the Guatemalan proposals concerning the United Nations rules for the conciliation of disputes between States, availing itself of the useful general comments by Member States set out in the Secretary-General's report on the subject (A/46/383).

59. New Zealand strongly supported increased adherence to the compulsory jurisdiction of the International Court of Justice, and took the view that the topic of ways and means of enhancing the effectiveness of the Court would merit study by the Special Committee in the future. In recent years there had been a growing number of States adhering to the compulsory jurisdiction of the Court, and the establishment by the Secretary-General of a Trust Fund to enable States to settle disputes through the Court was a further valuable development. Nevertheless, as the Secretary-General noted in his report, recourse to the Court was still regrettably infrequent.

60. The proposals submitted by the Soviet Union in the area of the maintenance of international peace and security warranted further reflection, and in some cases seemed to flow naturally from the Committee's recent achievements in the field of fact-finding. A more developed proposal put forward by the Soviet Union at the most recent session with regard to the enhancement of cooperation between the United Nations and regional organizations also raised a number of interesting issues. Although his delegation did not underestimate the difficulties in achieving a useful document which struck an appropriate balance between the complementary roles of the United Nations and regional bodies established in accordance with Chapter VIII of the Charter, it would be constructive to consider that subject further, particularly in the light of the Security Council's recent action to restore peace in Yugoslavia.

61. In general, while the Special Committee offered an opportunity for both large and small States to contribute to enhancing the implementation of the Charter and the role of the United Nations, it was a particularly important

(Mr. Adank, New Zealand)

body for smaller States, who were more susceptible to threats to their security than were their larger and more powerful partners within the Organization.

62. In setting the agenda for the Special Committee's future work, Member States must bear in mind both practical and realistic objectives. Experience suggested that topics on which no consensus existed at the outset were unlikely to benefit from discussion within the Special Committee.

63. Mr. ROSENSTOCK (United States of America) said that in the period of almost two decades since the Special Committee had begun its work there had been a growing recognition that the transition from confrontation to cooperation might not prove lasting unless the rule of law upheld by the Charter of the United Nations was strengthened. The activity of the Security Council in the previous 15 months in adopting resolutions and promoting peace in the Middle East, South-East Asia, North Africa, Central America, Europe and, most recently, the Caribbean has established precedents which strengthened the Council's capacity to respond to problems of peace and security. Those developments had been so positive and significant that it seemed odd indeed to hear voices from another era referring to the unanimity rule in the Security Council as an obstacle to progress or urging that the Charter should be re-examined with a view to eliminating provisions that had never been used by the Organization and had clearly lost whatever force they might have had. To lend credibility to some of those arguments, it had been suggested that there had been no changes since 1945, a claim so clearly false that it was unlikely to carry conviction.

64. In fact, the Charter had stood the test of time and had been as flexibly interpreted as its status as a constitutional document required. The main immediately relevant change that had occurred in the world since 1945, namely the emergence of new nations, was reflected, inter alia, in the contemporary composition of the Security Council. In the first 20 years of the Council's existence, the countries of the Western Group and the Eastern European Group had held an automatic majority, and it had not been possible to adopt a resolution without the affirmative vote of at least one of the permanent members. In the Council of today, however, the countries of the so-called third world had a de facto collective veto, and it was possible for the Council to adopt resolutions and even decisions without the affirmative vote of a single permanent member. Proposals either to amend the Charter fundamentally or to tinker with it ignored the significance both of those developments and of the Council's efforts over the previous 15 months.

65. Welcoming the fact that the Security Council had not been alone in its contribution to institution-building, he noted that the Special Committee had produced a draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. The draft was a worthwhile contribution, although not perfect in all respects. While some perplexity might be caused by the fact that the draft referred to three organs

(Mr. Rosenstock, United States)

without more explicit recognition of the primary role of the Security Council in all matters of peace and security, reassurance was provided in paragraph 7 by the phrase "in the context of their respective responsibilities". Similarly, a careful reading of paragraph 6 was necessary in order to recognize that the powers of the Security Council under Chapter VII of the Charter were adequately acknowledged, as they were, by the phrase "subject to the relevant provisions of the Charter". While those points could have been made more clearly and directly, the determination of the international community to strengthen the institution of fact-finding came through loud and clear in the substantive part of the draft Declaration, notably in part III, and especially paragraphs 21, 22 and 23. Equally evident was the recognition that the crucial factor was the will of States to make the system work. The draft Declaration thus constituted a worthwhile contribution to the United Nations Decade of International Law.

66. He joined other speakers in expressing confidence in the usefulness of the handbook on the peaceful settlement of disputes between States, a further noteworthy contribution made by the Special Committee, and supported its publication and dissemination.

67. His delegation was confident that the Special Committee would remain productive by continuing to exchange ideas on a wide range of issues, concentrating on areas in which general agreement was possible, such as conciliation. In that connection, he expressed his delegation's appreciation to the Government of Guatemala for proposing the issue and for making a helpful and detailed proposal which shed considerable light on various aspects of the issue. There were a number of questions which the Guatemalan proposal merited which should be raised in the course of the detailed consideration. For example, aspects of the process suggested for situations in which more than one conciliator was involved might be more complex than was necessary or desirable, and seemed to represent the replacement of traditional conciliation by "fact-finding". The traditional role of the Secretariat seemed to be expanded to a point at which questions of human and financial resources, among others, arose: such questions did not detract from the appeal of the Guatemalan proposal, although they might highlight the number of detailed issues which must be considered. One possible way to proceed might be a general discussion in the Special Committee, possibly followed up by a request to the International Law Commission to carry out a short-term project on draft conciliation rules. Alternatively, the Special Committee could remain seized with the issue until its consideration, if that was the prevailing view. Another related area which it might be productive to examine was the procedure elaborated by the Conference on Security and Cooperation in Europe at its Meeting of Experts on Peaceful Settlement of Disputes, held in Valletta from 15 January to 8 February 1991. That procedure recognized that a wealth of means and methods, ranging from negotiation to judicial settlement, was available for resolving disputes, and that what was needed was to persuade the parties to agree to a particular method and to pursue it. That was a fairly modest approach which, although it might require a certain infrastructure,

(Mr. Rosenstock, United States)

might be suitable not only for Europe but at the global level as well. The Special Committee was an entirely suitable forum for examining the question of the wider utility of the procedure.

68. With regard to the proposal by the Soviet Union on enhancing cooperation between the United Nations and regional organizations, while the relevance of the proposal had been recognized by the Security Council, it remained vague, despite its potential interest, and the time might not be ripe to accord it priority.

69. Mr. CHADWICK (Chile) welcomed the fact that nothing in the draft Declaration on Fact-finding was to be construed as prejudicing in any manner the provisions of the Charter. The sending of a United Nations fact-finding mission to the territory of any State required the prior consent of that State, subject to the relevant provisions of the Charter. Such a mission could signal the concern of the Organization and should contribute to building confidence and defusing the dispute or situation while avoiding any aggravation of it. His delegation agreed that the Secretary-General, in preparing and updating lists of experts in various fields who would be available for fact-finding missions, should seek the broadest possible geographical representation.

70. The rigorously prepared draft handbook on the peaceful settlement of disputes between States, for its part, would be of great value in both official and academic circles and was a significant and concrete contribution of the Special Committee to the United Nations Decade of International Law. The Government of Chile wished to reiterate its firm resolve to maintain as one of the main pillars of its foreign policy the peaceful settlement of disputes between States in accordance with the Charter, particularly Article 33. The history of Chile demonstrated his country's peaceful vocation, and potential conflicts with sister countries in Latin America had happily been defused. For example, in 1979 the Governments of Chile and Argentina had invited the Holy See to mediate in a territorial dispute concerning the delimitation of their common boundary. The successful papal mediation had culminated in the Treaty of Peace and Friendship signed in 1984. Twenty-three of the 24 disagreements that had arisen between the parties subsequent to 1984 had been resolved by negotiation and consultation, while the one outstanding issue had been taken to arbitration as had been provided for in the 1984 Treaty. Chile and Argentina, which shared one of the longest and most difficult frontiers in the world, had thus offered to the international community an eloquent example of the peaceful settlement of disputes, thereby reinforcing the climate of mutual confidence in the region.

71. With regard to the means of peaceful settlement of disputes, the Government of Chile employed both diplomatic and juridical means of resolving international disputes and respected decisions on specific means agreed upon in particular cases. Article 33 of the Charter and section H of the draft

(Mr. Chadwick, Chile)

handbook provided also for resort to regional agencies or arrangements. In conformity with those provisions, the Organization of American States had promptly implemented the mechanisms agreed upon at the most recent session of its General Assembly with a view to restoring the democratically elected Government of Haiti, following the tragic situation that had developed in that country. Latin America had a long tradition of peaceful settlement of disputes, which had prevented the spread of various foci of political and social instability.

72. The Government of Chile wished to pay tribute to the Secretary-General and his staff for the outstanding work accomplished during his two terms of office. The agreement recently signed between the Government of El Salvador and the Frente Farabundo Martí marked an important milestone in the efforts that were being made by the Secretary-General to achieve a peaceful, just and lasting solution to the tragic conflict in El Salvador. He wished to appeal to the international community to grant the Secretary-General all the assistance necessary for him to accomplish his tasks in the area of the peaceful settlement of disputes.

73. His delegation hoped that the handbook would be widely disseminated in all the official languages of the United Nations since the peaceful settlement of disputes was the foundation on which both domestic and international stability could be built in an increasingly interdependent world. In Chile old antagonisms had yielded to cooperation based on a spirit of national reconciliation in which disputes were settled first and foremost by peaceful means. He hoped that the provisions of the handbook reflected the political will of Governments and peoples to resort to peaceful means of settlement of disputes.

74. Mr. ACHARYA (Nepal) welcomed the fact that paragraph 12 of the draft Declaration on Fact-finding enjoined the Secretary-General to pay special attention to using the United Nations fact-finding capabilities at an early stage in order to contribute to the prevention of disputes and situations. The draft Declaration sought to establish a balance of power between the Security Council, the General Assembly and the Secretary-General in the spirit of the Charter, by entrusting them with different responsibilities at different stages of disputes. Fact-finding missions would be more effective, however, if the areas of cooperation among the three organs were better defined. His delegation did not support the inclusion of paragraph 6 in the draft Declaration since the requirement to obtain prior consent could jeopardize the fact-finding mission itself. While Article 2, paragraph 7 of the Charter prohibited the United Nations from intervening in matters which were essentially within the domestic jurisdiction of a State, the issue of human rights had moved from the domestic to the international level. In the current situation in Haiti, for example, the United Nations might never receive permission to send a fact-finding mission or might be able to do so only after the original situation that needed to be ascertained no longer existed.

(Mr. Acharya, Nepal)

75. In view of the recent sweeping changes in international politics, particularly in the Soviet Union and the countries of Eastern Europe, the working paper submitted by the Soviet Union, which dealt not only with international peace and security and the peaceful settlement of disputes but also with improving cooperation between the United Nations and regional organizations, could be discussed at the following session.

76. In its constructive draft handbook on the peaceful settlement of disputes between States, the Special Committee had combined traditional modes of settlement of disputes with customary and conventional rules of international law. While the developing countries would find the handbook very useful, further progress could still be made towards satisfying the interests of all Members of the United Nations.

77. In conclusion, he wished to reaffirm the commitment of the newly elected Government of Nepal to the peaceful settlement of disputes. Moreover, the new Constitution of Nepal explicitly incorporated a commitment to abide by the provisions of the United Nations Charter and international law.

78. Mr. BELLOUKI (Morocco), reviewing the Secretary-General's comments on the topic before the Sixth Committee in his report on the work of the Organization (A/46/1), stressed the importance of cooperation among States in meeting all challenges, including the perennial problem of poverty and destitution, which could threaten international peace and stability and the new world order. Preventive diplomacy allowing prompt intervention in disputes would ensure that international bodies played a more effective role in maintaining international peace and security.

79. His delegation, which advocated peaceful settlement of disputes in accordance with the rules of international law and the principles of justice and equity, believed that the draft handbook on the peaceful settlement of disputes between States should be disseminated as widely as possible to all interested parties. Furthermore, it welcomed the suggestion that the Secretary-General's authority to settle and prevent disputes should be extended. It noted with interest that the Libyan delegation had echoed the Secretary-General's calls for reform. He reaffirmed his delegation's support for the Soviet proposals and re-emphasized the importance of strengthening collective security and considering the relationship between the United Nations and regional organizations in that connection. The Soviet proposals, in fact, embodied the future work of the Special Committee with regard to international peace and security.

The meeting rose at 1.05 p.m.